UNITED NATIONS

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Security Council

Distr.
GENERAL

S/AC.26/1998/6
2 July 1998

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE SIXTH INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES UP TO US$100,000 (CATEGORY "C" CLAIMS)

GE.98-62712

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Introduction

1. This is the sixth report to the Governing Council of the United Nations Compensation Commission (the "Commission") by the Panel of Commissioners (the "Panel") appointed to review individual claims for damages up to US$100,000 ("category 'C' claims"), pursuant to article 37(e) of the Provisional Rules for Claims Procedure 1/ (the "Rules"). This report contains the determinations and recommendations of the Panel in respect of the sixth instalment comprising 71,042 category "C" claims submitted to the Panel by the Executive Secretary of the Commission, pursuant to article 32 of the Rules.

2. In accordance with its previous practice, the Panel has reviewed the sixth instalment of category "C" claims in a continuum with the Panel's processing of the first five instalments of category "C" claims. This report should therefore be considered in conjunction with the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" and its annexes 2/ (the "First Report"), the Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" and its addendum 3/ (the "Second Report"), the "Report and Recommendations Made by the Panel of Commissioners Concerning the Third Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims) 4/ (the "Third Report"), the "Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" 5/ (the "Fourth Report"), and the "Report and Recommendations Made by the Panel of Commissioners Concerning the Fifth Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims) 6/ (the "Fifth Report") which have been approved by the Governing Council. 7/ The present report builds upon the considerations, precedents and determinations expressed in the First to Fifth Reports, and incorporates these by reference. Claims included in the sixth instalment have therefore been processed in accordance with previous determinations and decisions approved by the Governing Council.

3. This report reflects the claims reviewed and work performed by the Panel since it issued its recommendations concerning the fifth instalment of category "C" claims in June 1997. In addition to regular communications with the secretariat and the review of work-in-progress, the Panel met with the secretariat at the Commission's headquarters in Geneva on 24-25 November 1997 and 16 May 1998.

I. PROCESSING APPROACH AND SCOPE OF REVIEW

4. In its review of claims and in making its recommendations, the Panel has applied relevant Security Council resolutions, Governing Council decisions, the Rules, and other relevant principles and practices of

international law. In addition to the information presented in the claims, the Panel has also taken into account the following: information accompanying the submission of the sixth instalment of claims provided by the Executive Secretary pursuant to article 32 of the Rules; additional information and views presented by Governments and international organizations, and by the Government of Iraq, in response to the reports presented to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules; and relevant United Nations and other reports.

5. In terms of defining the Panel's mandate, the Governing Council's decision 1 continues to have particular relevance. 8/ In this decision, the Governing Council determined that category "C" claims, together with claims in categories "A" and "B", were considered to be the "most urgent" claims. Accordingly, decision 1 provides for the processing of these categories of claims "on an expedited basis" using procedures "such as checking individual claims on a sample basis, with further verification only if circumstances warranted." Consistent with this decision, article 35(2) of the Rules states that documents and other evidence will be the reasonable minimum appropriate under the circumstances, with a more flexible evidentiary standard applying to claims for smaller amounts, such as "those below US$20,000".

6. The First and Second Reports provide an extensive discussion of the considerations and preparations underlying the processing methodologies applied to category "C" claims. 9/ In view of the Panel's mandate, and in keeping with the "fast-track" processing approach applied to the second to fifth instalments of claims, the application of statistical sampling and modelling techniques continues to form the basis for the processing of the sixth instalment of category "C" claims. 10/ The Panel notes that, as explained in the Second to Fifth Reports, claims containing loss elements that do not meet the fast-track processing criteria also require expedited processing; however, these will be included in the seventh instalment. Given the large number of claims received in category "C", the Panel has determined that those claims that can be processed efficiently through database-assisted techniques will continue to be addressed first. In fact, it has been the adoption of this fast-track processing approach that has, since 1996, expedited the processing of the 345,899 category "C" claims included in the second to sixth instalments.

7. The claims included in this instalment represent the losses most frequently suffered by category "C" claimants. They include losses claimed on the "C1" page of the claim form for transportation, food, lodging, relocation and other related costs ("C1-Money" losses); losses claimed on the "C4" page for clothing, personal effects, household furnishings and other personal property-related losses ("C4-CPHO" losses); losses claimed on the "C4" page for lost or stolen motor vehicles or for their repair costs ("C4-MV" losses); losses claimed on the "C5" page related to bank accounts located in Kuwait; wages and salary losses claimed on the "C6" page of the

claim form ("C6-Salary" losses); and losses claimed on the "C1" page of the claim form for mental pain and anguish ("C1-MPA" claims).

8. In March 1997, claims information for approximately 165,000 category "C" claims from submitting Governments and international organizations other than the Governments of Egypt and Kuwait, 11/ the data entry for which was described in paragraph 18 of the Second Report, was fully integrated into the electronic database. This consolidation of the electronic category "C" database permitted the additional sorting of category "C" claims in order to facilitate the work of the Commissioners and to ensure uniformity in the treatment of similar claims, as provided in article 17 of the Rules. 12/

9. Thus, while claims presenting losses that may be processed by fast-track methodologies are still the only claims included in the sixth instalment, several claims containing fast-track losses that could not be processed in previous instalments because they contained jurisdictional or technical defects could now be electronically categorized according to legal and factual issues associated with those groups of claims. This categorization has allowed for the consistent and uniform resolution of problematic issues such as: claimants with dual nationality, one of which is Iraqi nationality ("claimants with Iraqi dual nationality"); claimants whose total amounts claimed are in excess of US$100,000; and claimants whose claims present jurisdictional problems related to the time and location of the loss. The electronic categorization of claims has also permitted the Panel to make recommendations for the resolution of category "C" claims where some amounts have been stated as compensation already received and claims made for "Other Damages".

10. For the sixth instalment therefore, the Panel has not only selected claims meeting the fast-track processing criteria described in the First and Second Reports and refined further in the Third, Fourth and Fifth Reports, but has also, during its working sessions in 1997 and 1998, resolved additional factual and legal issues and identified, validated and finalized additional fast-track methodologies. Together with the secretariat, the Panel has also reviewed and compared claims which contained electronic loss-related data to ascertain whether data existing in the paper claims or their attachments constitute a loss element and has made recommendations accordingly. The Panel has also reviewed and resolved certain category "C" claims containing transferred category "B" claim issues. 13/ Finally, the Panel has set a policy for the selection of valid claims from among two or more duplicate claims and has approved a new report format ("Report Type VII") for the reporting of all rejected duplicate claims that have valid counterparts reported in the first five instalments, as well as those included in this instalment. Thus, while the sixth instalment of category "C" claims continues the fast-track processing tradition in that it contains only those claims with identified loss elements that may be processed efficiently through database-assisted techniques, it also resolves many category "C" claims presenting special problems as described more fully in the following sections.

II. JURISDICTIONAL ISSUES

A. Bona fide dual nationality

11. In paragraph 17 of decision 1, the Governing Council clearly states that "[c]laims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State", thus barring such individuals from eligibility to claim compensation from the Commission. However, neither the Rules nor the Governing Council defined the term "bona fide nationality" as used in decision 1.

12. The issue of bona fide dual nationality was not addressed in the First Report because no claim included in the first instalment was submitted by an Iraqi national. 14/ Since the First Report, category "C" claims indicating "Iraqi" in either the "nationality" or the "dual nationality" fields of the electronic category "C" claim have been routinely removed from the processing cycle so that the issue could be dealt with uniformly. There are 47 such claims in the electronic database. 15/ All of these claims were manually reviewed.

13. Where relevant and appropriate with respect to the issue at hand, the Panel has had regard to and drawn upon the work and determinations of other panels, in order to ensure consistency throughout the recommendations of panels of Commissioners. The Panel noted that the category "B" Panel of Commissioners ("the 'B' Panel") had specifically allowed claims made by two Iraqi nationals with dual nationality to be compensated because in both instances the respective second nationality was obtained several years prior to the Iraqi invasion and occupation of Kuwait. The "B" Panel considered that both claimants held the bona fide nationality of another State within the meaning of decision 1. 16/ However, it was the category "A" Panel of Commissioners ("the 'A' Panel") that established general criteria for determining whether a claimant with Iraqi dual nationality should be considered a bona fide holder of a second nationality. 17/

14. As a starting point for its methodology, the "A" Panel examined whether a claimant with Iraqi dual nationality had acquired the second nationality mainly or solely for the purpose of becoming eligible to claim compensation before the Commission. The "A" Panel found it reasonable to hold that a claimant with Iraqi dual nationality who had applied for or acquired a second nationality before the criteria for claims eligibility had been established by the Governing Council in decision 1 on 2 August 1991 ("the relevant date") should be considered to be a bona fide holder of the second nationality. 18/

15. The "C" Panel also found merit in considering the date of the invasion on 2 August 1990 as a "relevant date". Based on the facts before it, however, the "C" Panel endorsed the "A" Panel interpretation of bona fide dual nationality with a "relevant date" of 2 August 1991. Using that standard, no compensation has been recommended in respect of seven of the 47

category "C" claimants in question because the Panel has found them to be Iraqi nationals who are not bona fide holders of a dual nationality for the purpose of eligibility to claim compensation before the Commission.

B. Amounts claimed in excess of US$100,000

16. The "C" claims category owes its creation to decision 1 of the Governing Council which provides for "expedited priority consideration" to individual claims of up to US$100,000 per person. 19/ While decision 1 provided that, for amounts in excess of US$100,000, the first US$100,000 could be presented in category "C" and the remainder separately, 20/ the mere fact of claiming for an amount in excess of US$100,000 in category "C" is not a jurisdictional bar to compensation. Thus, where losses greater than US$100,000 were presented in category "C", 21/ only the first US$100,000 of such losses would receive expedited consideration. Further, recovery in category "C" is limited to US$100,000.

17. The electronic category "C" database contains approximately 6,000 claims, each with a total amount claimed in excess of US$100,000. The claims are generally for the most commonly requested category "C" losses: departure and relocation, mental pain and anguish, personal property, motor vehicles, bank accounts, and salary. Despite the high amounts claimed, these claims demonstrate no appreciable difference in quality of presentation or in quality and quantity of evidentiary support from other category "C" claims. The most significant common characteristic is that in each case the claimant requests compensation for loss elements in amounts higher than those requested by most category "C" claimants so that the total amount claimed exceeds US$100,000.

18. The Panel considered whether the high amounts claimed for individual loss elements should be a priori reduced, either by fixed amounts or in a pro rata fashion, to the US$100,000 maximum in order to avoid awarding disproportionately high awards to claimants who had merely stated high amounts without providing significant evidentiary support. However, the Panel ultimately determined that reducing any amounts claimed before applying the formulas and statistical regression methodologies developed to resolve fast-track losses would not be necessary.

19. The Panel's determination took into account the effects of the external valuation methodologies used to resolve fast-track losses. The statistical regression models used to resolve C1-Money and C4-CPHO losses serve to recommend compensation not only as a function of the amounts claimed, but also according to the individual profiles of the claimants and the comparison of individual claimants to others in similar circumstances. 22/ The criteria and formulas used to value C1-MPA awards are based on Governing Council decisions 3 and 8. 23/ The formula used to value C6-Salary losses is based on a standard multiplier of seven applied to the prior monthly salary stated by the claimant. 24/ As such, the methodologies operate to ensure that amounts awarded in claims requesting

high amounts for fast-track losses are not significantly disproportionate to amounts awarded to others in category "C".

20. Global awards will in all circumstances be limited to US$100,000. Further, those claims containing amounts claimed that exceed the norm for a given loss element, as well as those with disproportionate reductions in amounts actually awarded, have either been manually reviewed and retained in the sixth instalment 25/ or removed from the processing cycle for amendment. The latter group will be included in the seventh instalment.

C. C1-Money claims with dates of departure outside the jurisdictional period

21. Paragraph 18 of decision 1 provides that departure-related claims are compensable when the departure from Iraq or Kuwait took place during the period 2 August 1990 to 2 March 1991 (the "jurisdictional period"). Paragraph 18 also provides that losses caused by an inability to leave or return to Iraq or Kuwait or a decision not to return ("relocation costs") are compensable if they resulted from circumstances occurring during the jurisdictional period. Losses caused by departure from or inability to leave Iraq or Kuwait, or a decision not to return during that period, include costs incurred by claimants for transportation, food, lodging, relocation and other related expenses, collectively called "C1-Money" claims. In the First Report, the Panel established that the jurisdictional period constituted a specific limitation to recovery for departure-related losses. 26/

22. There are approximately 10,500 category "C" claims for C1-Money losses where the indicated dates of departure are outside the jurisdictional period. 27/ In view of the large number of claimants with C1-Money losses who did not appear to meet the basic jurisdictional requirement for the relevant period, which would normally result in no compensation for their departure-related losses, a sample review of such claims was conducted to ascertain whether there were errors in data concerning the dates of departure or whether claimants misunderstood the requirements of the claim form. Generally, all such paper claims from entities submitting fewer than 2,000 claims ("small submitting entities") were manually reviewed and compared with their electronic counterparts. Sample paper claims were reviewed from entities submitting more than 2,000 claims ("large submitting entities"). Sample reviews were expanded as necessary to confirm results.

23. The manual review of the paper claims and their corresponding electronic claims generally confirmed that the dates of departure were correctly entered into the electronic database and could be confirmed by evidence such as personal statements and passport stamps showing the dates of exit from Kuwait or Iraq. The review further confirmed that many expatriate nationals, who resided in Iraq or Kuwait and who departed outside the jurisdictional period, departed during the traditional vacation months of June and July 1990. The review also confirmed that the late departure of

those who departed after the jurisdictional period was not due to the presence of "special circumstances", such as an inability to depart from Iraq or Kuwait due to being held hostage, or otherwise detained, by Iraqi authorities, 28/ but rather was due to causes not directly related to Iraq's invasion and occupation of Kuwait. Finally, in the case of some sample reviews, no additional information could be ascertained from the paper claim file to determine whether a claimant was claiming for departure or for relocation losses. 29/

24. In view of these results, the Panel found it reasonable to presume that those claimants who were resident in Iraq or Kuwait and who left during the traditional vacation months of June or July 1990 would have returned to those countries had Iraq not invaded Kuwait. The Panel presumed that for these claimants the inability to return or the decision not to return resulted from Iraq's invasion of Kuwait. Thus, claims for relocation-related losses by claimants leaving Iraq or Kuwait from 1 June to 1 August 1990 are compensable.

25. For claimants departing prior to 1 June 1990 who claimed for losses incurred because of an inability to return or a decision not to return, the presumption is not applicable. The Panel determined that the intervening period of more than two months between their departure and the invasion period is of such length of time that it cannot be presumed that the inability to return or decision not to return were caused directly by the invasion. The Panel therefore determined that claims for such losses by claimants leaving Iraq or Kuwait prior to 1 June 1990 are not compensable.

26. None of the claimants who left Iraq or Kuwait outside the jurisdictional period and who claimed for departure losses without indicating an inability to return or a decision not to return was able to demonstrate that the departure-related costs were directly caused by the invasion and occupation. For this reason, no departure-related expenses for such claimants could be reasonably attributed to Iraq's invasion and occupation of Kuwait. The Panel therefore determined that claims for departure losses only, when departure from Iraq or Kuwait occurred outside the jurisdictional period, are not compensable.

27. To implement these decisions to the applicable C1-Money claims on the electronic database, the Panel determined that the following criteria be applied:

a. claims for losses arising from an inability to return or a decision not to return to Iraq or Kuwait where the pre-invasion date of departure is indicated as no earlier than 1 June 1990 and a Kuwaiti civil identification or an Iraqi residency permit number is indicated in the relevant field are compensable; 30/

b. claims for losses arising from an inability to return or a decision not to return to Iraq or Kuwait where the date of

departure is prior to 1 June 1990 or after 2 March 1991 are not compensable;

c. claims for losses arising from an inability to return or a decision not to return to Iraq or Kuwait where the date of departure is in June or July 1990 and no Kuwaiti civil identification or Iraqi residency permit number is provided are not compensable; and

d. claims for departure-related losses where the date of departure is not within the jurisdictional period and where an inability to return or a decision not to return was not indicated are not compensable.

D. C6-Salary claims with country of employment other than Iraq or Kuwait

28. In the First Report, the Panel concluded that, subject to the requirements that must be met for a claimant to be eligible for compensation under particular category "C" losses, the Commission has jurisdiction over a claim irrespective of where the loss occurred. However, the Panel also found that losses occurring in Iraq and Kuwait can be more easily attributable to Iraqi actions, whereas a claim based on an incident occurring outside Iraq or Kuwait needs to be more fully substantiated. Thus, the location of a claimant's employment has a direct bearing on the issue of causation. 31/

29. The Panel also established during its first instalment review that if the claimant's country of employment was Iraq or Kuwait or if the claimant was resident in Iraq or Kuwait at the time of the invasion, it was appropriate to apply a general presumption that the employment-related losses were directly related to Iraq's invasion and occupation of Kuwait. 32/ Conversely, employment-related claims by claimants who were employed elsewhere do not benefit from the same presumption and need to be more fully substantiated. 33/

30. There are approximately 2,000 employment-related ("C6-Salary") claims where the "country" field on the C6 electronic page contains an entry signifying that the claimant's country of employment is "other" than Iraq or Kuwait. From this information alone, it would appear that the presumption of causation related to Iraq's invasion and occupation of Kuwait does not apply. However, in the light of other information readily available in the electronic database, it can be ascertained whether other data provided by the claimant and relevant to the issue of causation would either confirm the initial finding or would serve to refute it. 34/

31. The Panel found that if the claimant could establish the fact of residence in either Iraq or Kuwait by clear and convincing proof, the preponderance of the evidence would weigh in the claimant's favour and would support the compensability of a claim for employment-related losses

notwithstanding the fact that the country of employment was indicated as other than Iraq or Kuwait in the C6 page of the electronic claim. This fact of residence could be considered proven by the presence of a Kuwaiti civil identification number or an Iraqi residency permit number in the field provided for such data on the claimant identification page of the electronic claim. The Kuwaiti civil identification or Iraqi residency permit numbers provide the Panel with specific and objective means of verifying residence in Iraq or Kuwait prior to the invasion. 35/

32. Additionally, if claimants indicated on the C1 page that they departed from Iraq or Kuwait during the relevant period, such information would serve to corroborate the fact of residence in either of the two countries. At the very least, this information would serve to indicate presence in the relevant countries during the jurisdictional period.

33. An electronic survey of the target group of approximately 2,000 employment-related claims determined that nearly 25 per cent of the claimants had provided either a Kuwaiti civil identification number or an Iraqi residency permit number. Of these, six per cent indicated a country of departure other than Iraq or Kuwait. These latter claims were manually reviewed in order to verify the residence and employment-related information and to reconcile conflicts therein. All claimants who were deemed to have fully established the fact of residence in Iraq or Kuwait prior to the invasion have been determined to be eligible to receive compensation for their C6-Salary losses in accordance with the approved C6-Salary methodology. 36/

34. Nearly 75 per cent of the claimants provided neither a Kuwaiti civil identification number nor an Iraqi residency permit number. Of this group, claims by claimants who were not able to establish the fact of residence in Iraq or Kuwait but who could establish the fact of having been held hostage in Iraq or Kuwait as a result of the Iraqi invasion and occupation of Kuwait 37/ were also manually reviewed to determine whether circumstances supported the fact that such interference with the employment relationship occurred and that the claimant directly incurred salary losses. In cases where hostage-taking by Iraqi authorities directly interfered with a claimant's external employment relationship and the claimant did not receive salary and benefits as a result, the claimant's employment loss was found to be compensable in accordance with the approved C6-Salary methodology.

35. The Panel determined that those claimants who failed to establish the fact of residence in Iraq or Kuwait or the fact of direct interference with an employment relationship outside Iraq or Kuwait by the Iraqi invasion and occupation of Kuwait are not eligible for compensation for C6-Salary losses.

III. PROCESSING METHODOLOGIES

36. The consolidation of the category "C" claims database has resulted in the identification and grouping of claims for which the Panel had not yet

established the application of electronic-based processing techniques. Once these groups could be identified, additional sampling and manual review projects could be undertaken. Based on the results of those projects and considering the principles of mass claims processing adopted in all previous reports, additional claims were processed as described in this section.

A. Additional C1-MPA claimant categories

37. Pursuant to decisions 1, 3 and 8 of the Governing Council, a claimant may be compensated for mental pain and anguish ("MPA") on the "C1" page of the claim form ("C1-MPA") resulting from being taken hostage or illegally detained for more than three days; for being taken hostage or illegally detained for a period of three days or less in circumstances indicating an imminent threat to the claimant's life; and for being forced to hide on account of a manifestly well-founded fear for that life or of being taken hostage or illegally detained. 38/ In the First Report, the Panel established criteria for awarding compensation for such losses. 39/

1. C1-MPA claims for hostage-taking or illegal detention for three days or less

38. The Panel detailed criteria in the First Report by which a claimant could establish the fact of having been held hostage or illegally detained by officials, employees or agents of the Government of Iraq or its controlled entities. 40/ For those claiming for C1-MPA for hostage-taking or illegal detention for three days or less, however, it was also necessary to establish that they were held hostage or illegally detained under "circumstances indicating an imminent threat" to their lives. 41/ In its First Report, the Panel identified certain categories of claimants where circumstances indicating an imminent threat to the claimant's life may be presumed to be present. 42/

39. Altogether, C1-MPA claims for hostage-taking or illegal detention for three days or less numbered approximately 3,300. 43/ The Panel decided that such claims should be manually reviewed, either individually, or, where appropriate, on a sample basis. 44/ The manual review determined that up to 84 per cent of these claims were erroneously stated as C1-MPA for hostage-taking or illegal detention for three days or less. They should have been stated as C1-MPA for forced hiding instead and the claims were amended accordingly.

40. The Panel determined that nearly two-thirds of the approximately 16 per cent of the remaining C1-MPA claims for hostage-taking or illegal detention for three days or less met the criteria for compensability established in the First Report. 45/ Pursuant to the provisions of decision 3, these claimants will each receive compensation in the amount of US$1,500. There were 142 claims that did not meet the established criteria. They will therefore receive no compensation for C1-MPA for hostage-taking or illegal detention for three days or less.

2. Claims for C1-MPA for hostage-taking or illegal detention for more than three days

41. To receive compensation for C1-MPA for hostage-taking or illegal detention for more than three days, claimants are required to establish only the fact of being held hostage or illegally detained. 46/ In the Second Report, the Panel determined that, on the basis of the sampling results that confirmed the Panel's original findings with respect to C1-MPA claims in the first instalment, nationals of OECD countries with claims for C1-MPA for hostage-taking or illegal detention for more than three days should be compensated for their respective C1-MPA losses. 47/ After additional sampling projects, 48/ the Panel concluded in the Fifth Report that Kuwaiti nationals with claims for C1-MPA for hostage-taking or illegal detention for more than three days should also be compensated for such losses. 49/ In each instance, the Panel determined that compensation for such losses is to be based on the number of days stated in the claim form, to be calculated by application of the formula set out by decision 8 of the Governing Council. 50/

42. The remaining claimant group with claims for C1-MPA for hostage-taking or illegal detention for more than three days included approximately 5,000 nationals from countries other than Kuwait and OECD countries. Claims containing these losses were reviewed manually, with sampling as appropriate. 51/ The results showed that certain national claims programmes shared a homogeneous claims profile, 52/ were generally well-documented, and exhibited patterns of claims preparation, similar to those of Kuwaiti claimants 53/ for whom compensation had been recommended in the Fifth Report. Most claimants were able to establish the fact of illegal detention for more than three days with adequate and satisfactory evidence. After extrapolating the sampling results to the relevant claimant groups, the Panel determined that compensation for all nationals from countries other than Kuwait and OECD countries whose C1-MPA claims for hostage-taking or illegal detention for more than three days were submitted by Kuwait, 54/ as well as those claims submitted by Somali and Ethiopian nationals, would be based on the number of days stated in the claim form in accordance with the formula set out in decision 8.

43. Other sampling results were not so favorable for the claimant populations. Some claimants presented credible and verifiable evidence for having been detained in Kuwait. This detention, however, was shown to have occurred either after the cessation of hostilities or not as a result of acts or actions by officials, employees or agents of the Government of Iraq or its controlled entities. 55/ Still others departed from Iraq or Kuwait prior to 2 August 1990 or were resident in neither country and departed from a country other than Iraq or Kuwait.

44. Decision 3 and the criteria established by the Panel limit eligibility for compensation for C1-MPA for hostage-taking or illegal detention for more than three days to persons who were taken hostage or illegally detained in

Iraq or Kuwait during the course of the invasion and occupation. 56/ Consequently, the Panel determined that the claimants identified in paragraph 43 had failed to satisfy the jurisdictional requirements of time and place or had failed to prove the direct causal relationship between their claim for C1-MPA and the Iraqi invasion. These claimants will therefore receive no compensation for C1-MPA losses for hostage-taking or illegal detention for more than three days.

45. The results of the remaining sample reviews for nationals from countries other than Kuwait and OECD countries with C1-MPA losses for hostage-taking or illegal detention for more than three days were inconclusive. They did not allow for general determinations either as to the fact of hostage-taking or illegal detention or as to the sufficiency of the evidence submitted by the claimants in support of their claim. Bearing in mind the humanitarian considerations inherent in processing individual claims in category "C" and the specific provision in article 37(b) of the Rules for reliance on sampling techniques, the Panel awarded compensation to all remaining claims for C1-MPA for hostage-taking or illegal detention for more than three days submitted by nationals from countries other than Kuwait and OECD countries. However, in view of the inconclusive results of the sample reviews for the remaining population as a whole, the Panel determined that while these claims are compensable, the number of days of hostage-taking or illegal detention as stated by such claimants should be reduced by a weighted average percentage. 57/ Using the reduced number of days as a basis, compensation is calculated in accordance with the formula provided in decision 8.

3. C1-MPA claims for forced hiding

46. For compensable claims for C1-MPA for forced hiding, claimants must prove that they were forced to hide for more than three days on account of "a manifestly well-founded fear for their lives or of being taken hostage or illegally detained". 58/ In the First Report, the Panel identified certain categories of persons who could be considered to have been forced to hide on account of the "manifestly well-founded fear" specified in decision 3. The Panel further determined that claimants falling within any of the categories specified in eight "forced hiding conditions" or demonstrating any of the characteristics so identified in their claim forms or attached documentation may be considered to have established that they were forced to hide on account of a manifestly well-founded fear for their lives or of being taken hostage. 59/ In the Second Report, the Panel determined that claims for C1-MPA for forced hiding submitted by Kuwaiti nationals and by nationals of OECD countries were compensable. 60/ Compensation was to be based on the number of days stated on the claim form, to be calculated by application of the formula set out in decision 8.

47. There are almost 10,000 claims for C1-MPA for forced hiding by nationals from countries other than Kuwait and OECD countries in the electronic database. For these claimants, the Panel applied, where

appropriate, the same sampling methodology used to review the claims of nationals from Kuwait and OECD countries. 61/ The sample results demonstrated that characteristics of the sample groups of nationals from countries other than Kuwait and OECD countries whose C1-MPA forced hiding claims were submitted by Kuwait, as well as those for nationals of Somalia and Ethiopia were similar to those of the groups of claimants sampled for C1-MPA for hostage-taking or illegal detention for more than three days. 62/ The claimants generally were found to have remained in Kuwait throughout the invasion period and generally claimed to have been in hiding from Iraqi forces during the "critical period" between January and February 1991 when Iraqi forces embarked on a campaign of arrests and detention as threats of an attack by the allied coalition forces increased and, ultimately occurred. 63/

48. From the evidence submitted by the claimant groups specified in paragraph 47, the Panel determined that it may be reasonably concluded that such claimants fall under at least one of the eight "forced hiding categories". The Panel further determined that these claimants should be compensated on the basis of the number of days stated on the claim form, to be calculated by application of the formula set out in decision 8.

49. The sample results demonstrated that some nationals from countries other than Kuwait and OECD countries had left Iraq or Kuwait before the onset of the invasion while others departed from a country other than Iraq or Kuwait. Bearing in mind the jurisdictional requirements of time and place for C1-MPA claimants as specified in decision 3, the Panel determined that claimants who left Iraq or Kuwait before the jurisdictional period or who were not able to establish that they were present in either country during the invasion period, will receive no compensation for C1-MPA losses for forced hiding.

50. As was the case with the review of claims by nationals from countries other than Kuwait and OECD countries for C1-MPA for hostage-taking or illegal detention, the results of reviews of the remaining claims by nationals from countries other than Kuwait and OECD countries for C1-MPA forced hiding losses were inconclusive and would not justify the formulation of general presumptions regarding either the fact of being forced to hide or the sufficiency or adequacy of the evidence submitted in support of claims for C1-MPA for forced hiding. All remaining claimants sampled, however, indicated the number of days that they claimed to have been in hiding.

51. Again bearing in mind the humanitarian considerations inherent in processing individual claims in category "C", in particular that nationals from countries other than Kuwait and OECD countries were generally among the claimant groups who were most adversely affected by Iraq's invasion and occupation of Kuwait, the Panel relied on the specific provision of article 37(b) of the Rules that provides for sampling of individual claims with further verification to occur only as circumstances warrant. Therefore, as in the instance of claims for C1-MPA for hostage-taking or illegal detention

for more than three days by nationals from countries other than Kuwait and OECD countries, the Panel determined that all remaining C1-MPA claims for forced hiding are compensable so long as the number of days stated by the claimant was greater than three. However, in view of the inconclusive results for the remaining population as a whole, the number of days for forced hiding as stated by such claimants was reduced by a weighted average percentage. 64/ Using that reduced number of days as a basis, compensation was calculated in accordance with the formula set out in decision 8.

52. After a manual review of all C1-MPA claims for forced hiding where the number of days stated was three days or less, and considering that decision 3 provides for compensation only for those C1-MPA claims for forced hiding for more than three days, the Panel determined that C1-MPA claims for forced hiding for three days or less are not compensable.

B. Additional C4-MV issues

1. Elaboration of proof of ownership criteria

53. The First Report describes the processing considerations for claims for motor vehicles on the "C4" page of the claim form ("C4-MV" claims) and the substantive criteria to verify and compensate such claims. 65/ The Panel determined that claimants are considered to have established ownership for the motor vehicles claimed if they have provided the make or model of each motor vehicle, the registration or vehicle identification number, and the original cost or value thereof. Each criterion is capable of being electronically ascertained, thus making such C4-MV claims particularly amenable to electronic processing techniques. 66/

54. There are, however, approximately 14,000 claims 67/ requesting compensation for C4-MV losses in the electronic database that did not meet this threshold electronic ownership test. As noted in the Second Report, 68/ these claims were set aside for separate review. Sampling projects were undertaken to determine whether outright rejection of such losses would be warranted or whether simple refinement of the ownership criteria might itself resolve the problem.

55. The sampling results showed that outright rejection of such C4-MV losses would not be a fair outcome for these claimants. Most claimants in the sample had provided the missing information, either on the paper claim form itself or in the claim file attachments. Most claimants would thus meet the electronic proof of ownership criteria if a manual review of all such claims were feasible.

56. The sampling project also disclosed that the majority of claims failed the electronic proof of ownership test solely because there was no entry in the field "original cost or value". However, the project showed that these same claims generally did have an entry in the field "amount of loss". Following this discovery, an electronic survey of the target group was

undertaken. This survey ascertained that 71 per cent of the losses surveyed 69/ had an original cost or value that was equal to the amount of loss requested.

57. Given this electronic outcome and considering the results of the manually sampled claims, the Panel determined that the "amount of loss" may be used whenever "original cost or value" is not available in order to satisfy the proof of ownership criteria. The Panel also considered that this elaboration of the proof of ownership criteria would allow more claims to meet the electronic proof of ownership requirements in an expedited manner than would an individual review of the target group.

58. Consequently, the Panel determined that in order for a C4-MV loss to satisfy the refined electronic proof of ownership criteria, there should be entries in each of the following fields in the C4-MV electronic page: make or model; registration or vehicle identification number; and either "original cost or value" or "amount of loss". The Panel also decided that this refined proof of ownership criteria will be applicable both to claims for lost or stolen motor vehicles and to claims for motor vehicle repairs. Finally, the Panel determined that C4-MPV claims that do not meet the refined electronic proof of ownership criteria are not compensable.

2. Categorization of claims for lost or stolen motor vehicles versus claims for motor vehicle repairs

59. The fast-track methodology applied to C4-MV losses in the second to fifth instalments has so far applied only to claims for lost or stolen motor vehicles and not to those for repairs. Therefore, a threshold issue preventing fast-track treatment of approximately 15,000 C4-MV losses in the electronic database was that there was no electronic indication whether claimants meant for their claims to be treated as losses for lost or stolen motor vehicles or for motor vehicle repairs.

60. In order to determine whether the type of loss claimed for could be ascertained or inferred from the paper claim files of claims in the target group, sampling projects were conducted. The results of those projects were not conclusive. 70/ Even after review of the paper claim forms and the attached evidence, the type of loss claimed for could not be ascertained in more than half of the claims considered. In those claims for which the type of loss could be ascertained or inferred from information in the paper claim file, the overwhelming majority could be classified as claims for lost or stolen motor vehicles. Relatively few could be clearly classified as claims for motor vehicle repairs. 71/

61. Given the results of the sampling projects, the Panel determined that a logistic regression model should be applied to all losses in the target group to predict whether specific losses should be classified as for lost or stolen motor vehicles or for repairs. The results of the logistic regression model would then be applied to the target group.

62. Logistic regression is a standard statistical technique used to predict the category to which a target person or object could be deemed to belong according to a set of numerical or qualitative explanatory factors. 72/ In this specific instance and for each C4-MV loss that was not indicated, the logistic regression model was proposed to predict the type of loss claimed for according to a number of explanatory factors. 73/ The model was tested on the set of claims for which the types of C4-MV losses were clearly indicated on the electronic database. 74/ When compared with the claims for which the types of loss were indicated, the prediction success rate of this logistic regression model was 92 per cent.

63. The Panel considered the general acceptance of this statistical classification technique, the accuracy of the prediction rate of the specific logistic regression model used and the inconclusive results of the manual review of more than half of the claims sampled. 75/ The Panel was also mindful of the expedited procedures specifically mandated by article 37(b) of the Rules for large volumes of "urgent" claims. It therefore determined that this logistic regression model should be applied to all claims where the C4-MV loss type was not indicated and that the results of its prediction should be used to classify which claims would be deemed for lost or stolen motor vehicle losses and which would be deemed for motor vehicle repair losses. As a result, approximately 14,000 claims were deemed to be claims for lost or stolen vehicles and fewer than 1,000 claims were deemed to be for repairs.

3. Valuation of motor vehicles missing MVV Table values

64. In the First Report, the Panel determined that for motor vehicles that were destroyed, lost or stolen as a result of the Iraqi invasion, the amount of compensation awardable should be calculated on the basis of a standardized table of motor vehicle values indexed by make, model and year for motor vehicles in Kuwait for the years 1975 to 1990 (the "MVV Table"). 76/ The amount of compensation for C4-MV losses was then calculated on the basis of a comparison of the amounts claimed by claimants found to have established the fact of ownership, 77/ with the values indicated for the corresponding vehicles in the MVV Table. In its Fifth Report, the Panel determined that for Kuwaiti claimants the "amount of loss" stated by the claimant could be deemed the equivalent of the value stated in the MVV Table. 78/

65. Still, more than 9,000 claims for C4-MV losses remained in the electronic database and could not be processed electronically 79/ because there was no stated MVV value for comparison purposes. The absence of the MVV values could be explained, inter alia, by the following factors: there was no entry of MVV value; 80/ there was data entry error; the vehicle was not present in the MVV Table; 81/ the vehicle was an "extraordinary" vehicle such as a truck or bus, etc.; the "vehicle" had not yet been considered by the existing C4-MV methodology; 82/ or there was simply insufficient information in the claim file.

66. To resolve these valuation problems, the following sequence for providing MVV value estimates for C4-MV losses that did not have MVV values was adopted. First, using a computerized matching program, vehicles without MVV values were matched to similar vehicles having MVV values entered in the electronic database. 83/ The program then assigned the existing MVV value from the corresponding vehicle to the claim without an MVV value. The value obtained was manually verified by using the external MVV Table value. This computerized matching program allowed for the estimation of MVV values for more than 7,000 of the 9,000 claims without MVV values.

67. In respect of the approximately 2,000 vehicles for which no electronic match was found, it was first ascertained whether information on corresponding vehicles existed in the MVV Table. In cases where the vehicles existed in the MVV Table, the values listed in the MVV Table were manually inserted into the electronic claims. For vehicles which did not exist in the MVV Table, MVV values for comparable vehicles in the MVV Table were manually inserted. "Extraordinary" vehicle losses submitted by non-Kuwaiti claimants were matched to amounts of loss claimed for comparable "extraordinary" vehicle losses submitted by Kuwaiti claimants. 84/ Claims for C4-MV losses that met electronic proof of ownership but that provided only the country in which the vehicle was produced for the vehicle profile had the lowest MVV Table value provided for vehicles from that country inserted. Claims meeting electronic proof of ownership but with no intelligible information regarding the vehicle profile had the minimum MVV Table value inserted. Finally, all C4-MV claims that were identifiable as being for boats or motorcycles have been removed from the processing cycle. Valuation issues for such claims will be addressed in the seventh instalment.

4. Resolution of C4-MV claims for repair costs

68. After the Panel had resolved the issues of (a) whether a non-indicated C4-MV loss could be deemed to be for repairs and (b) whether an MVV value could be ascertained in cases where no MVV value existed in the electronic claim in order to provide an objective measure against which to value the loss amount claimed, a fast-track methodology in order to process C4-MV claims for repair losses was developed.

69. In the First Report, the Panel took into account the Governing Council's guidelines that a lesser degree of evidence may be sufficient for claims with lower amounts, as well as its own observations of the patterns of evidence and the amounts stated in the claims. It therefore decided that C4-MV claims for repair costs up to US$500 that meet the fact of ownership criteria should be compensated the full amount claimed. For C4-MV claims for repair costs in excess of US$500, however, the Panel determined that the amount to be recommended would be determined after reviewing evidence submitted with the claim. The amount to be generated in this manner would in no instance exceed the objective valuation of the claimant's vehicle obtained from the MVV Table. 85/

70. In its review of sixth instalment claims, however, the Panel took note of the large number of C4-MV claims for repair costs (approximately 4,000) that met the electronic proof of ownership requirements and considered that the manual review of these claims would not be feasible in the context of mass claims processing. The Panel therefore considered alternatives that would allow for the equitable yet expedited processing of this loss element.

71. In the light of the external valuation methods used successfully to resolve large numbers of C1-Money and C4-CPHO losses, a linear regression model was used to assist with the valuation of recommended amounts for C4-MV repair losses meeting electronic proof of ownership and with amounts claimed for repairs in excess of US$500. Following the same standard statistical procedures used to define the C1-Money and C4-CPHO regression models described in the Second Report, 86/ a model was developed to determine the average amount claimed for C4-MV repairs for each claimant's profile, based on indicators concerning the vehicles' and the claimants' characteristics. 87/

72. For each claimant, the amount generated by the model is compared to the amount claimed by the claimant and to the MVV value of the corresponding vehicle. 88/ Providing that proof of ownership criteria are met, the lowest of the following three amounts is recommended for compensation for C4-MV repair costs:

a. claims for C4-MV repair costs up to US$500 will be compensated in the amount claimed;

b. claims for C4-MV repair costs in excess of US$500 will be compensated in accordance with:

(1) application of the linear regression model developed to resolve C4-MV repairs;

(2) comparison of the result generated by the model with the amount claimed by the claimant and the objective MVV value of the corresponding vehicle; and

(3) selection of the lowest amount of the three, provided that this amount is not less than US$500. In the event the amount generated by the model is less than US$500, the claimant will be awarded US$500.

C. C6-Salary Issues

73. The Panel's valuation methodology for C6-Salary claims is detailed in the First Report. 89/ That methodology takes into account that a claimant's pre-invasion income reflected a wide variety of employment-related factors, including, inter alia, the remaining portion of a fixed-term contract, unpaid remuneration, allowances and benefits, holiday pay, end-of-year

payments and other bonuses, payment in lieu of notice of termination of employment, severance pay, end-of service indemnities and gratuities and the claimants' own obligations to mitigate their losses. Bearing in mind that the manual review of each income loss in category "C" is not a viable option, the Panel found that the pre-invasion monthly income should be the point of departure for determining compensation. The resulting methodology applied a multiplier of seven to the claimant's asserted pre-invasion monthly income.

74. In accordance with its review of C6-Salary claims for the second instalment, the Panel "capped" the compensation for claimants with asserted pre-invasion monthly incomes in excess of US$750. 90/ For successful C6-Salary claimants with pre-invasion monthly incomes exceeding US$750, compensation was limited to the lower of (a) the amount claimed by the claimants or (b) the amount resulting from the application of the seven multiplier to their monthly incomes. 91/

75. In order to apply this methodology to claims for C6-Salary losses through database-assisted techniques, it is necessary for an amount to be entered into either or both of the "wages and salary" and the "other" fields of the "C6" page of the electronic claim. One composite amount, if both fields have entries, serves as the limit against which the amount resulting from the application of the seven multiplier is compared. However, in the electronic database, there were approximately 3,000 claims for C6-Salary losses that had no amount entered in either of the relevant fields. There were also approximately 3,000 claims for C6-Salary losses with uniform amounts stated, raising a presumption that claims may have been erroneously or unintentionally entered into the electronic database. In its review of category "C" claims for the sixth instalment, the Panel considered all issues relating to these claims. The results of that review are described in paragraphs 76-79, infra.

1. C6-Salary claims with a prior monthly salary in excess of US$750 and no amount of loss stated but with a "value of loss" existing in the electronic claim

76. There were approximately 1,400 such claims for C6-Salary losses in the electronic database that had no entries in either the "wages and salary" or "other fields". These claims did have entries in the total "value of loss" field of the "C6" page, however. An electronic survey of all such claims demonstrated that most claimants provided enough additional information on the "C6" page to create a presumption that they could confirm the fact of their employment in Iraq or Kuwait. 92/ The Panel therefore found it reasonable to transfer the "value of loss" amounts to the "wages and salary" field in order to permit application of the C6-Salary methodology for such claims. The methodology can therefore also be applied to these claims to compare the amount resulting from the application of the seven multiplier to the "value of loss" stated by the claimant and to limit the effect of the seven multiplier when the amount stated by the claimant is lower.

2. C6-Salary claims with a prior monthly salary in excess of US$750, no amount of loss stated and no "value of loss" existing in the electronic claim

77. In the electronic database, there were approximately 1,600 claims for C6-Salary losses with characteristics similar to those described in paragraph 76 above. That is, the asserted monthly salaries were in excess of US$750 and there were no entries in the "wages and salary" or "other" fields. For this group, however, there were no entries in the "value of loss" field on the "C6" page to serve as the measure of comparison to the multiplier formula and to limit its application. 93/ An electronic survey of these claims demonstrated that most claimants also provided enough additional information on the "C6" page to create a presumption that they could confirm the fact of their employment in Iraq or Kuwait. 94/

78. After considering several different proposals for ascertaining an amount claimed, 95/ the Panel chose the approach presenting the least likelihood of overcompensation to the claimant population as a whole in rendering these claims amenable to processing by database-assisted techniques. Thus, the Panel determined that the average recommended amount for each salary range and nationality 96/ would be deemed the "salary and wages" amount for these claims for purposes of applying the C6-Salary methodology. Insofar as this average recommended amount would be less than the amount that would result from application of the seven multiplier, it would serve as a limitation to the amount the claimant could recover.

3. C6-Salary claims with uniform prior monthly salary amounts and uniform amounts of loss stated

79. There are nearly 3,000 claims for C6-Salary losses in the electronic database that are characterized by their uniform assertion of prior monthly salary amounts of "100" and total amounts claimed of "700". 97/ Unlike the groups discussed in paragraphs 76 to 78, supra, the overwhelming majority of such claims provide no additional information about their C6-Salary losses. 98/ The Panel determined that, to maintain consistency, claims for which enough additional information could be ascertained from the electronic "C6" page to create a presumption that the claimants could confirm their employment in Kuwait or Iraq would be compensated. However, the Panel determined that those claims for which additional information could not be ascertained from the electronic "C6" page in order to create the presumption that the claimants' employment in Iraq or Kuwait could be confirmed would not be compensated for C6-Salary losses.

D. Other Issues

80. There were several other groups of claims in the electronic database that contained losses amenable to fast-track processing. For these losses, however, there existed a variety of underlying technical and substantive problems that needed to be addressed prior to application of fast-track

methodologies. Most of these problems and the proposals for their resolution are described more fully in this section. Those remaining will be addressed in the seventh instalment report.

1. Claims with global status "null"

81. One group of approximately 1,800 category "C" claims presented no electronic loss profile in the database, that is, information was not present in relevant data fields to permit application of the fast-track methodologies. While the electronic claims often contained some information, it could not be ascertained from that information alone whether compensable loss elements existed in the claims. The claims were therefore considered to have a global status "null". 99/ As such, without further review, they would be ineligible for compensation.

82. The Panel reviewed sample claims in this group. It also considered the humanitarian nature of category "C" claims and the possibility of error not only in the completion of the paper claim by the claimant but also in the entry of data into the electronic claim. Therefore, the Panel determined that, within this group of claims, all those containing any electronically identifiable loss-related information should be manually compared with the paper versions. This review would decide whether a loss element should have been created in the electronic claim. The Panel also determined that those claims containing no electronically identifiable loss-related information whatsoever would receive no compensation.

83. The electronic survey ascertained that approximately 1,300 claims would meet the Panel's criteria for manual review. Following that review, where warranted, sufficient relevant loss data was entered into the electronic claims so that the processing methodologies could be applied. 100/ When no relevant loss-related data could be ascertained from the paper claim file, the claim remained ineligible for compensation.

2. Claims declaring compensation received from non-Fund sources

84. Decision 13 of the Governing Council provides that amounts paid to claimants as compensation from other sources "be deducted from the compensation to be paid from the Fund to that claimant for the same loss". 101/ The intent of that decision is to avoid multiple recovery of compensation by claimants for the same losses.

85. In addition to decision 13, the category "C" claim form requests claimants to enter whether and how much compensation they may have received in connection with their losses. Thus, this information has been recorded in the category "C" electronic database. More than 9,100 category "C" claimants indicated that they had received compensation from other sources ("LCAR"). 102/ Assuming the amounts had been entered correctly, several questions arose: (a) whether LCAR amounts stated could actually be tracked to specific loss elements claimed; (b) whether claimants had taken LCAR

amounts into consideration when calculating the amounts of the losses claimed; and (c) whether LCAR amounts should be deducted from amounts claimed by the claimant or whether they should be deducted from the reduced amounts awarded by the category "C" methodologies.

86. Sampling projects demonstrated that LCAR amounts asserted by up to 30 per cent of category "C" claimants had indeed been entered in error. 103/ LCAR amounts asserted by 97 per cent of the claimants in one sampling project could not be categorized to a loss element claimed by those claimants. In a majority of these cases, LCAR amounts were for relief or general dislocation assistance payments from the claimants' own Governments. 104/ Other projects demonstrated that LCAR amounts could not be related to a loss element claimed for in up to 36 per cent of the claims. LCAR amounts asserted by category "C" claimants in all sampling projects had generally not already been deducted from amounts claimed.

87. The observed effect of the methodologies used to process fast-track losses in category "C" has generally been to reduce compensation claimed by category "C" claimants. 105/ The Panel considered that reducing such compensation further by LCAR amounts that may be in large part attributable either to data error or to an amount received for a loss not even claimed would be neither equitable nor fair to the claimants.

88. The Panel also considered that deducting an asserted LCAR amount from an award already reduced by application of the methodologies used in category "C" would likely result in a disproportionate reduction of a claimant's award. Additional sampling exercises were conducted to verify the potential for a disproportionate reduction. With an exception for one group, 106/ this potential for disproportionate reduction was realized. Considering all of these findings and taking account of the explanations provided by the Governments in the first instalment, the Panel is satisfied that multiple recovery from the Commission by a claimant for the same losses is unlikely. Thus, the Panel determined that, with one exception pending review, 107/ final amounts awarded in category "C" would not be reduced further by LCAR amounts.

3. Claims for "other damages" ("CS-Other")

89. Paragraph 14 of decision 1 of the Governing Council provides the framework for the losses to be considered in category "C". It specifies that the Commission will give expedited priority consideration to claims for losses up to US$100,000 "with respect to death or personal injury, or losses of income, support, housing or personal property, or medical expenses or costs of departure", directly caused as a result of Iraq's unlawful invasion and occupation of Kuwait. Paragraph 6 of decision 1 also provides that the Commission will consider claims for mental pain and anguish ("MPA"). The circumstances governing the categories and compensation limits for MPA losses are specified in decisions 3 and 8. The business losses of individuals that are eligible for consideration under the expedited

procedures are discussed in decision 4. General propositions and conclusions dealing with all business losses are discussed in decision 9. These decisions are taken into account in loss pages C1 to C8 of the category "C" claim form.

90. In an effort to ensure that claimants could describe their losses in the most comprehensive manner possible, the category "C" claim form also included a field entitled "any other damages not covered by the above" on the "summary of losses" page ("CS-Other"). The instructions on the claim form specified that those persons seeking to obtain compensation for such losses should attach a schedule providing details of what happened, a description of damages, and the total value of loss.

91. CS-Other amounts entered in the claims, when reviewed in the context of all other sampling and manual data projects, were routinely verified to confirm whether or not the CS-Other amounts in those claims had been entered in error. 108/ If the review confirmed that the CS-Other amounts had not been entered erroneously, that an explanation was provided in support of the CS-Other amounts, that the CS-Other amounts were indeed meant to be included among those stated, and that they had not already been duplicated among the losses stated on an appropriate loss page already reflected in the claim form, the CS-Other amounts were transferred to the appropriate loss page. During those general reviews, it was determined that all CS-Other amounts that could be attributed to valid and compensable losses specified in Governing Council decisions were potentially transferable to loss pages already existing in the category "C" claim form. 109/

92. However, there remained approximately 9,400 claims in the electronic database that contained unreviewed CS-Other losses. Sample reviews were conducted in accordance with article 37. 110/ One submitting country alone accounted for approximately 7,500 claims containing CS-Other losses. That sample group was thus particularly probative with respect to shared evidentiary and other relevant characteristics for those nationals. 111/ Another sampling group for approximately 1,500 claims was composed of three geographically-related countries sharing similar characteristics. 112/ The remaining approximately 400 claims represented such disparate claimant groups that each claim was manually reviewed.

93. The sample results showed that those CS-Other amounts that were not entered in error, for which an explanation existed and that, pursuant to the relevant Governing Council decisions, could be deemed compensable loss elements were potentially transferable to loss element pages already existing in the category "C" claim form. Where CS-Other amounts were potentially transferable to fast-track loss elements, the sample demonstrated that these loss elements generally existed in the claim already. For fast-track losses, compensation is determined by operation of the fast-track methodologies. Electronic surveys of the database confirmed that recoveries for the general claimant population with CS-Other amounts would neither be significantly benefited by the transfer nor inequitably

harmed by the failure to transfer the CS-Other amounts. The sample results also showed that, where CS-Other amounts were generally transferable to non-fast-track losses, these non-fast-track losses already existed in the claim form, with an exception for one claimant group. 113/

94. The Panel considered the totality of the sampling projects, the electronic survey results and the extensive manual reviews of CS-Other losses undertaken in the context of all projects. Taking specific note of the losses enumerated by the Governing Council for category "C" claims in paragraph 14 of decision 1, as well as in decisions 3 and 4, the Panel determined that CS-Other amounts in category "C" claims did not represent independently identifiable loss elements eligible for compensation in category "C". The Panel determined, rather, that CS-Other amounts could be identified with and potentially transferred to loss elements already existing in category "C". The Panel further determined that CS-Other amounts in claims containing only fast-track loss elements will not be taken into account when calculating compensation amounts for those losses. The Panel noted, however, that CS-Other amounts that are potentially transferable to existing non-fast-track losses will be evaluated in context during its consideration of non-fast-track losses in the seventh instalment.

4. Claims including transferred "B" claims

95. Paragraphs 10 to 13 of decision 1 provide for the payment of fixed amounts with respect to serious personal injury or death. The related claims were to be reviewed by the category "B" Panel of Commissioners. In its early consideration of such claims, however, the category "B" Panel noted that several category "B" claimants had presented claims, not for serious personal injury or death, but rather for MPA losses relating to being forced to hide or being illegally detained or taken hostage. 114/ Noting that these losses would not be compensable in category "B" but would instead be eligible for compensation in category "C" in accordance with the guidance provided by decision 3 for MPA claims, the "B" Panel requested that the Executive Secretary reallocate these claims to the "C" Panel. 115/ In total, 351 such category "B" claims were transferred to category "C". Eighty-four of these claims were included in the First Report. 116/ Of the 84 claims, 29 transferred claims were incorporated into corresponding category "C" claims. Because no corresponding "C" claims were detected at the time of the First Report, category "C" claims were created for the remaining 55 claims.

96. The creation of the new "C" claims inadvertently caused problems with the intra-category duplicate matching program. Consolidation of the electronic database in March 1997 eventually permitted extensive electronic searches of the category "C" claims database. It was then detected that, in some cases, the same claimants had already submitted claims in category "C". 117/ The "created" category "C" claims contained only C1-MPA loss elements. However, the claims submitted independently by the same claimants in category "C" may have included C1-MPA loss elements but generally also

requested compensation for other loss elements. The matching program, however, was unable to make this distinction. It automatically removed several claims from the processing cycle as they were found to be duplicates of the created "C" claims that were reported in the first instalment. This should not have occurred before the claims had all of their category "C" losses considered. Where those losses met relevant criteria, they should have received compensation accordingly. 118/

97. The Panel approved the review of all category "C" claims that contained the same or similar claimant identifier information as the remaining 267 transferred "B" claims, in accordance with decisions 3 and 8. Most of the category "C" claims so identified have been reviewed and the transferred "B" issue for each of those claims has been resolved. To the extent all remaining losses in these category "C" claims are fast-track losses and there are no technical issues remaining for resolution, these category "C" claims are included in this sixth instalment. Some will receive compensation in addition to C1-MPA. Others will receive no compensation because they are exact duplicates of claims that have already been fully recommended for compensation. Each submitting Government for whom these decisions are relevant will be advised accordingly.

5. Identification, selection and reporting of intra-category duplicate claims

98. The large number of category "C" claims, the number of countries submitting such claims and the fact that claims were submitted in several consolidated submissions have created the potential for intra-category duplicate claims and multiple recovery by the same claimant for the same losses. Using a special program similar to that used in the processing of category "A" claims, before reporting category "C" claims in an instalment, the secretariat has, inter alia, first performed a cross-check on a number of available identifiers in order to exclude intra-category multiple recovery as much as possible. 119/

99. By July-August 1997, the intra-category matching program had located approximately 12,400 potential duplicate category "C" claims in the electronic database. After considering several aspects of these duplicate claims, the Panel determined that most claimants who had submitted duplicate claims through the same national claims program had not generally done so in bad faith. Rather, these duplicate submissions most often occurred because of failure of communication or were due to claimant misunderstanding of the claims process. Thus, the Panel set out a selection policy to choose which claim submitted by the same claimant from the same submitting entity would be deemed compensable.

100. The basic premise for the selection policy was that the claim submitted later or latest in time 120/ would be considered the claimant's final description of the losses claimed and would be the version processed. Thereafter, any duplicates of that version would receive no compensation.

The Panel found it reasonable to presume that the claim submitted later in time could be determined electronically if the claim was submitted in a later consolidated submission ("lot"). Thus, as between duplicates, the claim with the higher lot number would be the version processed. When duplicate claims existed within the same lot, however, the Panel found it reasonable to use the higher claim number within the same lot as the deciding factor.

101. There were some exceptions to this selection policy. 121/ The most significant exception was that of duplicate claims submitted by the same claimant through different submitting entities. As a result, "valid" claims selected among those duplicates submitted by different submitting entities will be considered separately in the seventh instalment. 122/

102. Before implementing the selection policy, it was first confirmed whether claims were in fact duplicates. Then, in accordance with the policy set out by the Panel, the "valid" claim in a confirmed pair was selected. As a result, approximately 4,500 claims identified as duplicates will not be compensated. Provided the "valid" claims have been reported in the first to sixth instalments of category "C" claims, rejected duplicate claims are included in this sixth instalment report. A separate report containing these claims will be provided to each submitting entity concerned. The report will match the numbers of the non-compensated duplicates with the "valid" claims for which compensation was recommended.

6. Explanation and review of outlier claims

103. Both the First and the Second Reports detailed the considerations that led the Panel to adopt supplementary means of assessing value for certain losses submitted by category "C" claimants. 123/ The Second Report highlighted that for loss types such as C1-Money and C4-CPHO, the claims by themselves do not provide a "sufficiently clear or consistent" valuation basis 124/ and that the quality of presentation was itself a factor in the methodologies that the Panel determined were appropriate. 125/

104. Considering the limitations of a program to finalize processing of more than 420,000 individual claims, each with a potential for more than 20 loss elements, and, in particular, the expedited and urgent nature of category "C" claims that is mandated by decision 1, the Panel, in the Second Report, determined that statistical regression models, i.e., sets of variables and corresponding parameters that form the regression equations, would be used to value both C1-Money and C4-CPHO losses. 126/

105. In this determination, the Panel relied not only on the advice of independent statistical experts 127/ but also on the data contained in the category "C" claims submitted to the Commission. The models were developed from relevant data taken both from the claim form and from external sources. 128/ The models used the largest possible representative samples of available category "C" claims 129/ to define the parameters, i.e., the

weighting to be given to each of the variables included in the analysis. The parameters of these base models were tested on respective replication samples, i.e., samples of claims separate from those used to build the base models, in order to confirm the explanatory power of the base models. The values obtained generally confirmed the respective explanatory power of the base models. Comparison of the compensation results for the base and replication samples revealed no significant differences in outcome. 130/ As a final measure of validation for the C4-CPHO regression analysis, the results obtained from the modelling were analyzed in the light of external data relating to wealth and property accumulation patterns of persons living in Iraq and Kuwait. This analysis generally confirmed the modelling results. 131/

106. To further validate the valuation results obtained by the model, the Panel verified, on a sample basis, the evidence submitted in support of C1-Money and C4-CPHO losses. In addition to confirming the immense diversity of the items claimed, the sampling results revealed patterns of evidence similar to those previously observed. While approximately 93 per cent of C1-Money claimants and 90 per cent of C4-CPHO claimants submitted some form of evidence in support of their claim in addition to the claim form, 132/ in view of the immense diversity of the evidence submitted in support of valuation, and given that the nuances of individual claims cannot be considered within the context of a mass claims processing methodology, 133/ the Panel concluded that the statistical regression model would be the best available option for valuing such claims. Thus, the Panel determined that claims for both C1-Money and C4-CPHO losses should be compensated at the lower of the amount claimed or the amount generated by the respective statistical regression models. 134/

107. In accordance with standard statistical practice, 135/ all outlier claims 136/ were excluded from the model building phase. In the model application phase, however, the model is applied to all claims included in a particular instalment and may include claims used in the model building phase as well as those not used for that purpose. Regardless of the claims to which the model is applied, because the parameters of the model have been determined using a representative sample, all claims are treated alike on the basis of a common mathematical formula. 137/ Thus, outlier claims are also included in the application phases of the respective models. However, in order first to ascertain whether the outlier status is the result of error, the Panel directed that all outlier amounts claimed should be reviewed for data error and amended, if appropriate, prior to application of the model.

108. Once the respective models are applied to all relevant losses included in an instalment, it has been observed that the compensation recommended for certain of these losses equals 35 per cent or less of the amounts claimed. 138/ In view of the Panel's concern for potential error, these claims have been routinely removed from the processing cycles pending further review. 139/ Such outlier claims that had been removed from earlier

processing cycles were subsequently reviewed and, where appropriate, amended. These claims were then reported in the fifth instalment, provided that they contained only fast-track losses and did not otherwise present special problems. 140/ However, even after the manual reviews, the model-generated award would still have taken into account the claimant's individual profile and the comparison between the amount claimed by that claimant with those claimed by similarly-situated claimants. In the majority of cases, therefore, the claimant's outcome did not significantly improve, even after review.

109. Thus, for some submitting Governments, the only category "C" claims that were reported in the fifth instalment were those with disproportionate reductions in compensation amounts recommended, particularly with respect to C4-CPHO claims. The response to those outlier results has led to questions about whether the models that have been approved by the Governing Council 141/ have either been defective or incorrectly applied. 142/

110. The cumulative experience of category "C" reinforces the unlikelihood that the model is defective or has been incorrectly applied. The Panel notes that the models used have been certified by independent experts as appropriate and in accordance with the state of the art in statistical modelling. 143/ Moreover, the models have been the only feasible alternatives for the consistent and equitable valuation of these losses in the context of the mass claims processing considerations on an urgent basis that were explicitly mandated by decision 1 for category "C" claims. The Panel further notes that, based on the follow-up evidentiary manual review of the claims, 144/ sampling results and electronic surveys of the category "C" claims database, the C4-CPHO model has not been demonstrated to be either defective or incorrectly applied, nor have its results been inequitable, unjustified or unfair under the circumstances. On average, eight out of every ten claimants receive approximately the amounts claimed for. Finally, where undertaken, manual reviews have shown that the amounts awarded by the models have been fully as equitable as amounts supported by primary valuation evidence furnished by the claimant, when that evidence is available. 145/ This is so even if the primary evidence could be considered fully probative of value, traced to all items claimed for and given the most generous construction.

111. With this in mind, therefore, several hundred outlier claims with awarded amounts of 35 per cent or less of the amounts claimed for C1-Money or C4-CPHO losses were manually reviewed before inclusion in the sixth instalment. In accordance with the policy set by the Panel, when no data error was demonstrated, the claims have been included in this sixth instalment, to the extent that they do not otherwise present special problems or contain non-fast-track losses. Those claims for which the Panel has determined that further amendment is appropriate will be retained, amended accordingly, and included in the seventh instalment.

7. Bank account losses in Kuwait

112. In the First Report, the Panel noted that it did not award compensation for C5 bank account losses in Kuwait primarily because it found "most compelling" the procedures established by the Central Bank of Kuwait to enable foreign depositors not present in Kuwait to withdraw their funds from Kuwaiti banks. 146/ The Panel also noted that the Kuwaiti Government had indicated that the Central Bank of Kuwait was available to assist account holders in obtaining their funds and considered that the procedures put in place by the Central Bank provide claimants with full and free access to amounts they may have on deposit with Kuwaiti banks, regardless of their nationalities or places of residence. The Panel therefore requested, inter alia, that the secretariat provide all claimant governments with detailed information as to the procedures in place to permit withdrawal of the bank account proceeds so that they could so inform their claimants nationals who had submitted claims for bank account losses in Kuwait.

113. The Panel also requested that the secretariat forward to the Central Bank of Kuwait through the Kuwaiti Government, lists of claimants with bank account claims pending against specific Kuwaiti banks. 147/ Implementation of this action has proven to be somewhat problematic in instalments following the first instalment, in large part due to the more numerous claimants to which this action is applicable and considering the general quality and state of the data presented and available in the claim files. Because the C5 bank account loss in Kuwait was not considered a loss element compensable by the Commission for the reasons enumerated in the First Report, the secretariat has simply listed the claimants stating this loss but has not attempted further to verify or correct, where appropriate, the information contained in the electronic claims. Additional data, specifically with respect to the institutions concerned, has now been requested. 148/

114. Considering the substantial numbers of claimants involved, the general data quality and availability of information in the claim files presented to the Commission, that have been outlined both in this and in previous reports, providing additional and accurate data is a more onerous task than might first appear. Moreover, the compensability and value of this loss element generally should be determined between the Kuwaiti banks and the individual account holders. It is, therefore, the Panel's determination that, as between the Commission and the parties themselves, it is the parties themselves who are in the better position to furnish and verify the information required. Therefore, the fact that the secretariat has communicated the procedures to the Governments and forwarded the lists to the Kuwaiti Government as stipulated fulfills the Panel's requirement as stated in the First Report.

115. The Panel reiterates, however, that to the extent that all requests by claimants for the proceeds of bank accounts in Kuwait are not resolved by

the procedures stipulated in the First Report, 149/ upon timely notification to the Commission, other forms of recourse will be considered.

IV. CLAIMS INCLUDED IN THE SIXTH INSTALMENT

116. The sixth instalment is composed of claims that contain only those elements that could be processed efficiently through the fast-track methodology. However, as discussed above, the sixth instalment also addresses and proposes resolution for certain legal and technical problems that prevented the reporting of most of the claims in this instalment until now.

117. Thus, the losses in this instalment continue to represent the losses most often suffered by category "C" claimants, principally: losses claimed for transportation, food, lodging, relocation and other related costs ("C1-Money" losses); losses claimed for clothing, personal effects, household furnishings and other personal property-related losses ("C4-CPHO" losses); losses claimed for lost or stolen motor vehicles or for their repair costs ("C4-MV" losses); losses related to bank accounts located in Kuwait; and wages and salary losses ("C6-Salary" losses). The Panel in the sixth instalment has also developed criteria for compensation for nationals from countries other than Kuwait and OECD countries who submitted C1-MPA claims as a result of being illegally detained or taken hostage or for being forced to hide so that criteria for these loss elements now include all C1-MPA claimant groups.

118. As described more fully in this report, the Panel has also defined "bona fide dual nationality" for eligibility of claimants with Iraqi dual nationality before the Commission in the context of category "C" and set criteria for the application of jurisdictional requirements of time and location. Having considered the relevant decisions of the Governing Council and the results of all category "C" claim reviews before it, the Panel has also set policies with respect to amounts stated as compensation received, claims for "other damages" ("C5-Other"), the review of transferred category "B" claims, the review, selection and reporting of duplicate claims and the review of outlier claims. The amounts recommended for compensation in the sixth instalment represent the aggregate result of the Panel's processing of these fast-track loss elements and therefore resolve all losses contained in these claims.

119. During the processing of the sixth instalment, as in respect of previous instalments, the secretariat applied a special computer program to perform cross-checks on combinations of available identifying information in order to exclude as much as possible cross-category multiple recovery between category "A" departure claims and claims for departure losses submitted on the "C1" page of the category "C" claim form. As with previous instalments and, after confirming that claimants who submitted individual or family claims for departure losses in category "A" had also submitted claims for departure losses in category "C", the Panel has authorized the

secretariat to reduce the "C1-Money" departure awards in accordance with decision 24 of the Governing Council. 150/ The adjusted recommended award amounts for those claims are reported in this sixth instalment.

V. RECOMMENDATIONS

120. The Panel hereby presents the amounts recommended as compensation for 64,425 claims in the sixth instalment of category "C" claims. Totalling US$739,730,850.90, the recommended amounts for each Government and international organization included in the sixth instalment are listed in the following table. Each Government and international organization will be provided with a confidential listing containing the individual recommendations made in respect of its claimants. The amounts recommended for compensation in the sixth instalment resolve all loss elements presented in these claims. Six thousand six hundred and seventeen claims in the sixth instalment are not recommended for payment.

121. Those claims not recommended for payment relate exclusively to the following claims: claims by Iraqi nationals without bona fide dual nationality; claims with no electronic loss profile (global status "null"); duplicate claims submitted by the same claimants for the same losses in category "C"; claims for C1-Money losses in which recommended amounts are equal to or lower than the amounts previously approved by the Governing Council for the same claimants in category "A"; 151/ C1-Money claims for departure that do not meet the jurisdictional period requirements as specified by the Panel; claims for C1-MPA for hostage-taking or illegal detention for less than three days that do not meet the criteria for "imminent threat" specified by the Panel; claims for C1-MPA for forced hiding for less than three days; claims for C4-MV losses that do not meet the proof of ownership criteria specified by the Panel; claims for C5 bank account losses in Kuwait; 152/ claims for C6-Salary losses that do not meet the jurisdictional requirements for location of loss as specified by the Panel; and C6-MPA losses for Egypt. 153/

Summary of Sixth Instalment Recommendations			
Country	Number of Claims Recommended for Payment	Number of Claims Not Recommended for Payment	Amount of Compensation Recommended (US$)
Algeria	8	--	219,416.53
Australia	60	2	1,329,423.45
Austria	19	1	766,921.27
Bahrain	10	8	180,662.59
Bangladesh	2,974	77	21,008,549.75
Belgium	3	--	128,595.47

Summary of Sixth Instalment Recommendations			
Country	Number of Claims Recommended for Payment	Number of Claims Not Recommended for Payment	Amount of Compensation Recommended (US$)
Bolivia	1	1	50,393.39
Brazil	1	--	73,092.94
Bulgaria	27	--	446,062.03
Canada	233	7	9,019,289.33
Chad	1	--	16,806.17
China	37	--	235,396.65
Croatia	9	1	168,945.18
Cyprus	12	--	260,738.66
Czech Republic	7	--	85,692.53
Denmark	7	--	199,555.86
Egypt	7,743	2,955	89,431,308.21
Ethiopia	266	2	1,091,293.09
Federal Republic of Yugoslavia (Serbia and Montenegro)	12	--	317,492.86
Finland	4	--	58,539.80
France	97	4	2,698,702.88
Germany	50	4	1,802,402.49
Ghana	1	--	28,045.38
Greece	14	--	462,643.74
Hungary	25	--	495,425.51
Iceland	1	--	70,335.35
India	8,561	634	101,556,613.24
Iran, Islamic Republic of	979	20	12,339,925.67
Ireland	55	1	1,270,494.10
Israel	12	3	132,392.01
Italy	27	6	942,036.00
Japan	21	1	402,369.09
Jordan	15,454	1,621	177,883,052.22
Kenya	2	--	22,789.72

Summary of Sixth Instalment Recommendations			
Country	Number of Claims Recommended for Payment	Number of Claims Not Recommended for Payment	Amount of Compensation Recommended (US$)
Korea, Republic of	25	--	789,994.40
Kuwait	3,582	2	45,197,094.88
Lebanon	754	12	11,476,497.37
Malaysia	8	--	174,999.55
Malta	4	--	39,025.32
Mauritius	8	2	107,486.80
Morocco	17	2	254,615.48
Nepal	1	--	1,120.37
Netherlands	65	1	923,040.68
New Zealand	8	--	205,431.90
Nigeria	5	1	54,185.05
Norway	3	--	74,629.67
Pakistan	3,132	44	36,633,099.83
Philippines	1,994	578	10,479,739.00
Poland	106	3	1,849,654.38
Romania	2	--	29,052.42
Russian Federation	1	--	46,310.57
Senegal	11	--	421,540.11
Sierra Leone	1	--	11,823.53
Singapore	5	--	192,725.24
Slovakia	9	--	174,468.83
Slovenia	7	2	121,804.85
Somalia	1,772	2	10,035,104.93
South Africa	1	--	68,600.42
Spain	8	1	251,308.76
Sri Lanka	1,573	410	3,740,581.52
Sudan	2,060	1	21,206,529.60
Sweden	31	1	1,138,633.52
Switzerland	9	--	324,014.12
Syria	8,131	161	93,379,748.64

Summary of Sixth Instalment Recommendations			
Country	Number of Claims Recommended for Payment	Number of Claims Not Recommended for Payment	Amount of Compensation Recommended (US$)
Tanzania	4	--	153,833.35
Thailand	62	4	356,225.66
The former Yugoslav Republic of Macedonia	2	--	60,443.86
Tunisia	238	4	3,174,407.90
Turkey	154	6	1,739,853.38
Uganda	4	--	114,452.10
United Kingdom	661	22	21,402,912.18
United States of America	592	3	16,729,316.41
Vietnam	3	--	58,985.84
Yemen	1,359	4	13,028,007.79
UNDP Jerusalem	163	--	3,336,281.75
UNDP Kuwait	910	--	10,234,516.95
UNDP Washington	32	--	786,515.47
UNDP Yemen	18	1	240,087.73
UNHCR Bulgaria	22	--	295,892.97
UNHCR Canada	27	1	902,601.67
UNHCR Geneva	3	--	79,619.37
UNRWA Vienna	105	1	2,438,631.62
Total	64,425	6,617	739,730,850.90

122. In accordance with procedures set out in article 41 of the Rules for the correction of award amounts previously reported in an instalment and approved by the Governing Council, the Panel, on the initiative of the Executive Secretary, recommends approval of corrected recommended amounts as described in the following paragraphs. A confidential listing containing a revised breakdown of amounts in respect of individual claimants will be provided to the country affected.

123. The Panel recommends approval of corrected recommended amounts for one claim from the first instalment. The concurrent recommended change to that country award is listed below:

First Instalment Corrections

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Pakistan	17,763,696	17,768,886

124. The Panel recommends approval of corrected recommended amounts for five claims from the second instalment. The concurrent recommended changes to the respective country awards are listed below:

Second Instalment Corrections

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
India	68,212,562.22	68,214,211.58
Jordan	38,173,805.70	38,175,535.58
Kuwait	98,723,150.00	98,736,990.83
Lebanon	26,123,043.04	26,145,188.38

125. The Panel recommends approval of corrected recommended amounts for nine claims from the fourth instalment. The concurrent recommended changes to the respective country awards are listed below:

Fourth Instalment Corrections

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
India	44,834,752.51	44,851,833.72
Pakistan	11,801,874.79	11,812,923.50

126. The Panel is satisfied that the secretariat has used reasonable and practical means to detect the existence of duplicate claims. However, given the difficulty for the secretariat to identify each potential case of multiple recovery, the Panel recommends that similar checking procedures be implemented by all Governments and international organizations receiving lists of individual claimants in order to prevent instances of overpayment to their claimants.

127. With reference to the considerations on the subject of interest expressed in the First Report, 154/ the Panel recommends that interest be awarded on the claims included in this sixth instalment of category "C" claims as of 2 August 1990. 155/

128. These findings are without prejudice to the conclusions and findings of panels for other categories of claims. The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

Geneva, 16 May 1998

(Signed) Mr. L. Yves Fortier, Q.C.
Chairman

(Signed) Mr. Sergei N. Lebedev
Commissioner

(Signed) Mr. Philip K. A. Amoah
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ S/AC.26/1994/3.

3/ S/AC.26/1996/1 and S/AC.26/1996/1/R.3/Add.1/Rev.1.

4/ S/AC.26/1996/2.

5/ S/AC.26/1996/4.

6/ S/AC.26/1997/1.

7/ S/AC.26/Dec.25 (1994), S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996) and S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997).

8/ S/AC.26/1991/1.

9/ See First Report, pp. 49-208 and Second Report, paras. 24-51.

10/ In paras. 24-51 of the Second Report, the processing methodologies used for the loss elements included in the Panel's fast-track processing approach are detailed. The "fast-track" processing approach is itself described in detail in the Second Report. See, in particular, paras. 8-14.

11/ As noted in previous reports, the Governments of Kuwait and Egypt submitted category "C" claims to the Commission in both electronic and paper format.

12/ Article 17 provides that claims may be categorized, inter alia, into types or sizes and according to similarity of legal and factual issues.

13/ The Panel of Commissioners that reviewed claims for serious personal injury or death ("Category 'B' Claims") transferred 351 category "B" claims to category "C". Twenty-nine such category "B" claims were incorporated into existing category "C" claims, 55 had category "C" claims "created" and were reported in the first instalment (see First Report, Annex IV). Once the electronic database was consolidated, a full search for all existing corresponding category "C" claims of the 351 transferred "B" claims was undertaken. More than one hundred of these claims still await resolution, in part because they contain non-fast-track loss elements.

14/ See First Report, p. 14.

15/ One claim presented by an Iraqi national was discovered during a manual review of claimants declaring themselves "stateless" in the "nationality" fields of the electronic claims.

16/ See "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Individual Claims for Serious Personal Injury or Death (Category 'B' Claims)", S/AC.26/1994/4, para. 13.

17/ In adopting this criteria, the category "A" Panel was mindful of two considerations: (a) that the claims in connection with which this issue arose were "urgent claims" for the compensation of which "expedited procedures" had been prescribed by the Governing Council in decision 1; and (b) that the issue to be determined was whether the second nationality was acquired bona fide in the context of eligibility to be able to claim

compensation before the Commission. See "Report and Recommendations Made by the Panel of Commissioners Concerning the Sixth Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)", S/AC.26/1996/3, para. 29.

18/ Ibid., para. 30.

19/ S/AC.26/1991/1, para. 14.

20/ S/AC.26/1991/1, para. 15(b).

21/ Losses in excess of those compensable under categories "A", "B", or "C" were intended to be submitted to the Commission as category "D" claims. See decision 7, S/AC.26/1991/7/Rev.1, para. 7. Category "D" claims are not considered "urgent claims" subject to "expedited procedures" and they must be supported by "documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount" of the losses claimed (decision 7, para.8).

22/ See Addendum to the Second Report, S/AC.26/1996/R.3/Add.1/Rev.1, ("Addendum") Annex I, para. 10.

23/ S/AC.26/1991/3 and S/AC.26/1992/8.

24/ See First Report, p. 193, and Second Report, paras. 44-51.

25/ See paras. 107-111, this report.

26/ First Report, pp. 76-77.

27/ As was observed in the First Report, there was confusion apparent in the manner in which claimants completed the fields for their dates of departure from and, if applicable, return to Iraq or Kuwait. First Report, p. 70, note 134. Bearing in mind claimant departure patterns and statistics derived therefrom, a review of the departure claims supported the premise that stated dates of departure and dates of return were basically interchangeable. So long as one of these dates occurred within the jurisdictional period, it was considered to be a valid "date of departure" that would render a claimant eligible for compensation for a C1-Money departure loss claim.

28/ In the First Report, the Panel noted that those claimants departing after the jurisdictional period who could establish the presence of such "special circumstances" were not precluded from receiving compensation for their departure and relocation losses. First Report, p. 77.

29/ There are three types of C1-Money losses: (a) departure from; (b) inability to leave or return to Iraq or Kuwait; and (c) decision not to return to Iraq or Kuwait. If a claimant indicates (a) only, that claimant is deemed to have claimed solely for "departure". If a claimant indicates (b) or (c) or any combination of the three, the loss is considered to be one for "relocation" or "departure and relocation" and not solely for "departure".

30/ The Kuwaiti civil identification number and the Iraqi residency permit number electronically establish the fact that a given claimant was resident in Iraq or Kuwait prior to the invasion. This is consistent with the Panel's determination in the first instalment that claimants who established their presence or residence in Iraq or Kuwait prior to 2 August 1990 are prima facie considered to have established a direct causal link between their claimed relocation losses and Iraq's invasion of Kuwait.

First Report, p. 78.

31/ First Report, p. 13. Thus, for losses such as serious personal injury or death of a family member, damage or theft of personal property, loss of employment or losses in connection with an individual's business, the place of the event is not in itself a basis for determining whether or not the Commission has jurisdiction.

32/ First Report, p. 182.

33/ Ibid., p. 183. For claims based on an employment relationship not situated in Iraq and Kuwait to be considered compensable, the Panel found that a claimant must make a specific showing, substantiated by appropriate evidence that (a) his claim arises out of economic activity having a direct relationship with Iraq or Kuwait, and that (b) the claimant's employment was directly affected by the Iraqi invasion and occupation of Kuwait.

34/ For example, claimants themselves could have erroneously entered the country of employment. A manual review of the claims determined that some claimants who were in fact employed in Iraq or Kuwait by an employer whose home office was based in a third country entered "O" for other country of employment when they properly should have entered "I" for Iraq or "K" for Kuwait.

35/ First Report, p. 53.

36/ The C6-Salary methodology and Panel considerations are detailed in the First Report, pp. 168-194 and in the Second Report, paras. 44-51.

37/ The fact of hostage-taking was presumed if the claimant had made a claim for C1-MPA hostage-taking on the "C1" page of the electronic claim. All claims requesting compensation for losses due to C1-MPA for hostage-taking that also included C6-Salary losses in which the country of employment was indicated as other than Iraq or Kuwait were manually reviewed.

38/ See decision 1, para. 6; decision 3, paras. 3(e)-(f); and decision 8, Categories E-F.

39/ See First Report, pp. 90-96.

40/ The claimant was considered to have established the fact of hostage-taking or illegal detention if: (a) information provided by a Government confirms that the claimant was held hostage or illegally detained; or (b) the claimant alleges specific circumstances relevant to the detention or hostage-taking; or (c) sufficient information is available from the claim forms, the attached documentation, submissions by Governments, or relevant external information, to enable the Panel to ascertain the location from which the claimant was taken hostage or illegally detained, the date of the hostage-taking or illegal detention, the specific identity of the claimant's captors or the date the claimant was released from captivity. First Report, pp. 90-91.

41/ Decision 3, para.3(e).

42/ These categories included: (a) claimants who were detained and used in Iraq's "human shield" programme; (b) claimants indicating that they or a family member are a national of a country specified in relevant directives or orders issued by the Iraqi Revolutionary Command Council, or known to have been the target of actions by officials, employees or agents of the Government of Iraq or its controlled entities; (c) claimants who were held hostage or detained at a location where detainees were tortured or where

executions were carried out; or (d) claimants indicating that they or a family member are a member of, or were connected to, the Kuwaiti royal family, armed forces, government, resistance movement or police force, or that they were, or a family member was, a high-ranking official in the Kuwaiti Government, prior to or during the invasion and occupation of Kuwait, as the case may be. First Report, p. 92.

43/ This group included a small number of claims by nationals of OECD countries. As indicated in the Second Report at note 30, this group was intended to be reviewed separately from those claims by nationals of OECD countries for C1-MPA for hostage-taking or illegal detention for more than three days.

44/ In the second instalment the Panel indicated that it would expect to use sampling techniques to process additional groups of C1-MPA claims in future category "C" instalments. Second Report, para. 29. Earlier manual reviews had shown that claimants often claimed for both C1-MPA for hostage-taking or illegal detention and C1-MPA for forced hiding. Internal review first determined whether one or both claims were entered in error, particularly if the number of days claimed for both losses was identical. Unless both loss elements were clearly supported by attachments that demonstrated that the days stated did not overlap and that the losses were in fact different, only the claim for C1-MPA for forced hiding was maintained. The manual reviews also verified whether the number of days stated by the claimant was otherwise contradicted by the date of departure stated in the claim form.

45/ See note 42, supra. There was evidence in the claim files to indicate that at least several, if not all, similarly-situated claimants from one country would meet the criteria for compensation for C1-MPA for hostage-taking or illegal detention. Final resolution of those claims has been deferred until the seventh instalment.

46/ They do not have to establish circumstances indicating an "imminent threat" to their lives. See note 40, supra.

47/ Approximately 94 per cent of claims filed by nationals of OECD countries for hostage-taking or illegal detention for more than three days satisfied the Panel's criteria. These results are consistent with United Nations reports regarding incidents and patterns of hostage-taking, detention during the invasion and occupation of Kuwait. Second Report, para. 32 and note 32.

48/ The sampling results confirmed that, while the number of days stated in the claim form by Kuwaiti nationals was reliable, the claimants slightly understated the number of days supported by the evidence attached to the claim forms. Fifth Report, note 18.

49/ Ibid., para. 11. Kuwaiti nationals are a large, homogeneous group of claimants expected to share particular evidentiary and other relevant characteristics.

50/ Second Report, para. 32, and Fifth Report, para. 11.

51/ Sampling was used to determine trends for submitting entities having more than 1,000 claims with C1-MPA losses for hostage-taking or illegal detention for more than three days. Smaller submissions or those claims coming from the same geographical location were grouped to form one sample population. Randomly chosen claims were reviewed in order to ascertain whether sufficient evidentiary support existed, to evaluate the level of that support and to determine whether or not the criteria established by the Panel for this loss element in the First Report have been met.

52/ These were the Kuwaiti, Somali and Ethiopian national claims programmes.

53/ The review ascertained that Somali and Ethiopian nationals generally remained in Kuwait throughout the invasion period and, with respect to C1-MPA claims, had experiences similar to those of Kuwaiti nationals.

54/ Kuwait submitted some claims on behalf of claimants from countries other than Kuwait and OECD countries who generally had family ties to Kuwaiti nationals, e.g., spouses.

55/ It was observed that these claimants generally indicated departure dates from Kuwait after 2 March 1991.

56/ Decision 3 and First Report, p. 90.

57/ This percentage is calculated by taking the average percentage of all percentages of claims determined to have met the criteria for C1-MPA hostage-taking or illegal detention for more than three days, weighted by the relative size of the populations included.

58/ Decision 3, para. 3(f).

59/ First Report, pp. 92-95. The "forced hiding conditions" are specified in the First Report at pages 93-95.

60/ The determination was based on the results of sampling projects that confirmed that all claims by OECD nationals and 99.5 per cent of claims submitted by Kuwait satisfied the Panel's criteria. Second Report, note 32. Kuwaiti nationals and nationals of OECD countries met at least one of the eight "forced hiding conditions". They were known to have been specifically targeted for hostage-taking or illegal detention and were thus generally forced to hide. First Report, pp. 93-95 and Second Report, para. 31.

61/ See generally, Second Report, paras. 25-32. For claimants from countries other than Kuwait or OECD countries, submitting entities with C1-MPA forced hiding claims of 1,000 or more represented distinct sample groups while submitting entities with fewer than 1,000 claims were geographically grouped to form one sampling population. In this way, the sample groups attempted to maximize homogeneous claimant groups who could be expected to share evidentiary and other relevant characteristics.

62/ The results were similar to those observed in para. 42, this report.

63/ These claimants clearly met the eighth "forced hiding condition". First Report, p. 95. They also cited, inter alia, aerial bombings, killings by Iraqis and the danger from bullets going astray as their reasons for going into hiding.

64/ This percentage is calculated by taking the average percentage of all percentages of claims determined to have met the C1-MPA forced hiding criteria, weighted by the relative size of the populations included.

65/ First Report, pp. 148-158.

66/ Second Report, paras. 40-41.

67/ The number "14,000" represents the number of claims for motor vehicles with distinct claim numbers. Many claimants requested compensation for more than one motor vehicle in one claim. The actual

number of C4-MV losses represented in this group is approximately 24,000.

68/ Second Report, note 44.

69/ The total number of C4-MV losses with no electronic proof of ownership that were included in the electronic survey was 24,118. Of these, 17,009 had amounts of loss claimed that equaled the original cost or value.

70/ It was determined from the sampling projects that data in the electronic database was accurate enough to be used as a basis for development of a global database-assisted resolution. The samples also demonstrated that the level of evidence presented in support of such claims was significant enough that a global recommendation for zero compensation would not be equitable for these claimants.

71/ Approximately 40 per cent of the claims sampled could be classified as claims for lost or stolen vehicles and two per cent could be classified as for repairs. However, it was still unclear, even after examination of the claim form, whether 58 per cent of the claimants in the target group were requesting compensation for lost or stolen vehicles or simply for repairs.

72/ Logistic regression is a well-established statistical technique which has been widely used in the last thirty years. It is common usage in statistics to modify classical regression methodology in order to model a mathematical transformation of the probability of one given event occurring. For example, using this technique and based on the individual profile of each claimant, it would be possible to predict the probability of a given claim being for a lost or stolen vehicle or for repairs. According to the type of mathematical transformation used, various types of models could be devised. The most common of these is called the "logistic regression model". Most of the procedures used in linear regression analysis are still valid in the logistic regression. The main differences are in the nature of the prediction and in some of the regression diagnostics used. See, e.g., A. Agresti, Analysis of Ordinal Categorical Data (John Wiley & Sons, Inc., New York, 1984); P. McCullagh and J.A. Nelder, Generalized Linear Models 2d ed. (Chapman Hall, New York, 1989).

73/ These factors included: submitting entity; place of departure; objective value of the vehicle using the motor vehicle valuation table ("MVV value"); year of the vehicle; amount claimed; original cost of the vehicle; ratio between the amount claimed and the MVV value; total number of C4-MV losses claimed by a single claimant; and page sequence of the "not indicated" electronic C4-MV loss if more than one C4-MV loss is claimed by a single claimant.

74/ In order to build and check the accuracy of a model to be used to predict a loss type, it is necessary to use a data set for which the type of loss has already been ascertained. It is for this reason that the logistic regression model was developed from, compared to and tested with the electronic claims for which the type of loss had been ascertained before being applied to the set of claims for which the type of loss was unknown.

75/ Not only would a manual review of 15,000 C4-MV losses be intensively time- and resource-consuming, but based on the sample results, more than 7,500 such losses would still remain "not indicated" electronically. They would therefore remain unable to be processed.

76/ In doing so, the Panel considered the wide variation in the amounts claimed for similar automobiles or classes of automobiles, the inconsistency in the valuation-related information provided by claimants, the lack of uniformity of purchase prices indicated by claimants for similar automobiles and the lack of consistency in the valuation documentation submitted. The date of 1 August 1990 was used as a uniform date for valuation because the actual loss or loss of use of most automobiles took place on or around that date. The values in the MVV Table have been depreciated to reflect the value of motor vehicles as of August 1990. First Report, p. 156.

77/ See discussion paras. 53-58, this report.

78/ Fifth Report, paras. 12-13. The Panel determined that Kuwaiti claimants would be awarded the lesser of the amount claimed for the motor vehicle or the stated original cost of the vehicle. This conclusion considered that the amounts of loss stated by such claimants was in general slightly less than the amounts appearing in the MVV Table for the same vehicles.

79/ The electronic criteria were stated in the Second Report, para. 41. Without all relevant elements being electronically ascertainable, C4-MV losses cannot be processed by database-assisted techniques.

80/ This was principally the situation with claims submitted by Egypt. Both Egypt and Kuwait submitted claims to the Commission in electronic format as well as in paper. All other submitting entities had their claims entered into the electronic database by the Commission. The Commission ascertained during its off-site data entry project that MVV values were routinely entered into the electronic C4-MV page for all C4-MV losses where the corresponding vehicles existed in the MVV table. As noted earlier in this report, it was determined by the Panel during its fifth instalment review that the amounts of loss claimed for C4-MV losses in Kuwaiti claims already approximated the MVV Table values.

81/ The MVV Table contains only vehicles sold in Kuwait during the period from 1975 to 1990.

82/ This remains the case for up to 1,000 C4-MV loss claims for boats and motorcycles.

83/ The electronic program compared the make, model and year of the vehicle (the "vehicle profile") with no MVV value to the vehicle profile of a claim for which the MVV value already existed in the database.

84/ The Panel determined that an objective value for a non-Kuwaiti "extraordinary" vehicle could be derived from the median amount claimed for Kuwaiti claims for similar vehicle type and year profiles. The Panel noted that, in 65 per cent of the cases, the objective value so derived was equal to or lower than the amount claimed by the claimant.

85/ See First Report, pp. 157-158.

86/ See Second Report, paras. 33-39, and Addendum, Annex I.

87/ Indicators for vehicles included: vehicle type, MVV value, original cost and vehicle year. Indicators for claimants included: birth year, submitting entity, place of departure, monthly salary and gender.

88/ As is the case following application of the C1-Money and C4-CPHO models, outlier claims are manually reviewed for error.

89/ This methodology takes into account a number of factors, including relevant Iraqi and Kuwaiti legislation, an expert study of entitlements payable upon termination of employment, the number and characteristics of the claims included in the first instalment, the number of claims expected in other instalments, and the evidence submitted in support of the claims. First Report, pp. 168-194.

90/ In selecting a cap for claims with an asserted prior monthly salary in excess of US$750, the Panel considered the distribution of monthly incomes and amounts claimed in a statistical data-set of 60,374 C6-Salary claims representing all submitting Governments and international organizations. Second Report, paras. 46-51.

91/ Claimants who asserted prior monthly salaries of US$750 or less are compensated at the amount resulting from the multiplier formula. Ibid., para. 51.

92/ More than 67 per cent of the claimants surveyed provided other information on the "C6" page relevant to the number of months employed and/or country of employment.

93/ Claims with asserted prior monthly salaries that were equal to or less than US$750 did not present this problem because no cap applied to limit the effect of the multiplier. Second Report, para. 51.

94/ More than 68 per cent of these claimants provided other information on the "C6" page relevant to the number of months employed and/or country of employment.

95/ These included using six statistically-defined salary groupings and proposing that one of four scenarios be utilized: (a) utilizing as compensation the average amount claimed per salary grouping and nationality grouping; (b) applying the seven multiplier to the asserted prior monthly salary; (c) choosing the lesser of the operation of the seven multiplier and the average amount claimed per salary and nationality grouping; and (d) choosing the lesser of the operation of the seven multiplier and the average amount recommended per salary and nationality grouping. The Panel selected option (d).

96/ The six salary ranges were determined by a standard statistical clustering technique which, for a given number of groups, defines "cut-points" so that the groups are as homogeneous as possible with respect to the distribution of prior monthly salary. The groups and their ranges were as follows: (a) Group 1: US$750-US$1,130; (b) Group 2: US$1,130-US$1,590; (c) Group 3: US$1,590-US$2,080; (d) Group 4: US$ 2,080-US$2,630; (e) Group 5: US$2,630-US$3,250; (f) Group 6: more than US$3,250.

97/ There were approximately 3,000 claimants asserting these figures in various currencies. More than 900 claimants asserted them uniquely in Iraqi dinars and nearly 1,900 in Kuwaiti dinars.

98/ Of these claims, 2,506 of 2,908 (86%) with various currencies provided no other information than the asserted prior monthly salary and the amount claimed. This was also the case with 881 of 932 (95%) with amounts asserted in Iraqi dinars and 1,549 of 1,894 (82%) with amounts asserted in Kuwaiti dinars.

99/ "Null" indicates that no loss element has been identified anywhere in the electronic claim. Relevant loss-related data for each loss element is indicated by a "P" (for "Pending"). The number of "Ps" in an electronic claim also indicates the number of loss elements within that claim. When a methodology has been successfully applied to a loss element through

database-assisted techniques, the "P" is converted to "R" (for "Resolved"). It is only when all "Ps" within a given claim have been converted to "Rs" so that the claim has a "global status R" that the claim itself may be included in and reported in an instalment of category "C" claims. Even one "P" will result in a "global status P" for a given claim and will prevent its being included and reported in an instalment.

100/ For instance, a small group of claimants from Sri Lanka presented similar profiles. They were generally women, were all present in Kuwait during the invasion, and clearly intended to make a claim for some loss. Still, the claim files provided no loss data whatsoever. In accordance with the humanitarian nature of category "C" claims, the Panel determined that it could be presumed that these claimants would have suffered some losses during the invasion. Without additional information, however, the losses would be considered to be for personal property ("C4-CPHO"). The Panel thus determined that each claimant should receive an amount equal to the lowest amount recovered by a Sri Lankan claimant for C4-CPHO losses.

101/ S/AC.26/1992/13, para. 3(b).

102/ This acronym is derived from the expression "Less compensation already received" ("LCAR") on the summary page of the category "C" claim form.

103/ The LCAR amount was often present in the claim simply because of the erroneous placement of an amount on the summary page. Many claimants asserting such LCAR amounts belonged to claimant groups who had received minimal assistance in preparing claims and who had been observed to exhibit a general lack of understanding in their completion of the claim forms. This was particularly true of claimants who were unskilled laborers or non-English speakers.

104/ In the First Report, the Panel took note of the explanations provided by Governments concerning payments they have made to their claimants. The Panel particularly noted representations from Governments that they themselves would not seek reimbursement for these amounts in corresponding claims submitted for their own losses. First Report, p. 58.

105/ See discussion on amounts claimed in excess of US$100,000, paras. 16-20, this report.

106/ This instance concerned claimants from OECD countries who asserted LCAR amounts of US$9,000 or more and who had not entered the amounts in error. These claimants had generally provided sufficient information for amounts to be tracked to loss elements claimed for, had not already deducted the amounts and clearly intended for the amounts to be deducted from their awards. All such claims will be included in the seventh instalment after review.

107/ The exception concerns claimants from OECD countries who asserted LCAR amounts of US$9,000 or more. The Panel will make its determination about the LCAR amounts in these claims in the seventh instalment.

108/ Among those claims that were reviewed in the context of other projects, a majority of claimants who entered amounts in the CS-Other field did so erroneously. The field was used by many claimants simply to total the amounts claimed for all losses or to enter amounts claimed for HPA losses.

109/ For example, the previous reviews had shown that some claimants characterized the non-fee university educations that they would have received had they been able to remain in Kuwait during the invasion as a

CS-Other loss. This loss was generally considered analogous to C6-Support, i.e., scholarships or stipends that claimants might have received if they had studied in other countries. This loss element will be studied in the context of C6-Support losses in the seventh instalment. Other claimants stated CS-Other amounts that were creative, but remote and speculative. Some claimed for interest on amounts from salary earned that they would have deposited in savings accounts, had they not been prevented from receiving that salary by the Iraqi invasion of Kuwait. To the extent such amounts would be deemed compensable at all, they would already be encompassed in the compensation methodology for C6-Salary. CS-Other amounts also evidenced some of the anguish felt by many claimants who claimed for lost future income, including interest, for professions in which they were allegedly unable to qualify because their professional studies had been disrupted by the invasion.

110/ The majority of the remaining claims for CS-Other losses were submitted by four of the largest submitting entities, excluding Kuwait and Egypt.

111/ The sampling projects for this group demonstrated that most claimants had not entered CS-Other amounts in error and had not provided an explanation in only five per cent of the cases sampled. However, the CS-Other amounts were potentially transferable in nearly 66 per cent of the cases to existing C6-Salary amounts that would already be capped, i.e., limited by operation of the C6-Salary methodology. In another 34 per cent of the claims, CS-Other amounts were potentially transferable to C1-Money losses. Amounts sought for this loss are limited by application of the statistical regression model for C1-Money.

112/ The sampling projects for this group demonstrated that up to 30 per cent of claimants from two of the national groups had either entered CS-Other amounts in error or provided no explanation for the CS-Other amounts. Where CS-Other amounts were not erroneously entered, they were potentially transferable to already existing C4-CPHO, C1-Money and C6-Salary losses in up to 45 per cent of the claims sampled. Others were potentially transferable to existing non-fast-track loss elements.

113/ It was noted that Pakistani claimants with CS-Other amounts stated that the amounts related to their business losses. The CS-Other amounts were thus potentially transferable to C8-Business losses but generally no corresponding C8 loss elements existed in the claims. As a result, all Pakistani claims containing CS-Other amounts will be reviewed manually and included in the seventh instalment.

114/ The secretariat proposed to Governments that they should withdraw such claims and resubmit them under categories "C" or "D". A number of Governments modified their submissions accordingly. See "Recommendations Made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category 'B' Claims)" ("First 'B' Report"), S/AC.26/1994/1, p. 22.

115/ Ibid., pp. 22-23.

116/ See First Report, Annex IV.

117/ At the time of the filing of their claims, claimants could not have known that their category "B" claims would be transferred to category "C".

118/ In these cases, the independently submitted category "C" claims, without review, would have received no compensation.

119/ The Panel specifically referred to this use of the computer for matching exercises in the first instalment. First Report, pp. 70-71.

120/ In some cases, the electronic database contained more than two copies of the same claim submitted by the same claimant for the same losses. Once a "valid" claim was selected for processing, no other identified duplicate would receive compensation.

121/ These exceptions included: (a) claims reported out in an earlier instalment; (b) claims submitted by different submitting entities; (c) claims with global status "null"; and (d) transferred "B" claims.

122/ If specific direction from the parties concerned has not already been provided, the issue will be determined in consultation with the secretariat. Where appropriate, the secretariat will notify the submitting entities concerned.

123/ First Report, p. 143; Second Report, paras. 33-34.

124/ Second Report, para. 33.

125/ One category "C" claim alone may constitute an aggregate of more than twenty different losses, some of complex and diverse nature, each requiring the application of a separate processing method. Analysis of the claims has revealed distinct differences in presentation, themselves presenting complications and new issues. These include, inter alia: duplicate claim forms filed by the same claimant; multiple claims filed on behalf of or with other individuals; claims that were later supplemented or substituted in whole or in part; formal deficiencies under the Rules; identical or similar losses claimed in other claims categories; misunderstanding of jurisdictionally relevant dates; incorrect calculations; unclear currencies; differing numbering conventions; the use of wrong claim form pages; overlapping or double-claimed losses within a claim; implied or express inclusion of individual amounts for lump sum categories of mental pain and anguish; discrepancies between originals and copies of claim forms; contradictions between two completed sides of the pages of the form; questions of translation; claims exceeding US$100,000; lack of family-related information; inadvertent switches of evidentiary attachments between claims; ambiguity as to a claimant's identity; illegible information; claim forms in a tattered condition; ambiguous modifications to the completed claim forms; inconsistencies between specific amounts and totals; and the partial completion of the claim form. For every problem that appears to affect large groups of claims, thousands of individual claims present unique complications. See Second Report, paras. 8, 12 and 13.

126/ Ibid., paras. 33-39, and Addendum, Annex I.

127/ Second Report Addendum, Annex I, "Expert Opinion of Professor Y. Balasko and Professor G. Ritschard".

128/ Ibid., Annex I, "Technical Description", paras. 13-16.

129/ The C4-CPHO data-set for development of the model included 56,092 category "C" claims with C4-CPHO losses. The C1-Money data-set included 7,343 claims with C1-Money losses. Second Report Addendum, Annex I, "Technical Description", para. 9.

130/ Ibid., para. 28.

131/ Ibid., para. 29.

132/ Second Report, para. 39.

133/ First Report, p. 143.

134/ Second Report, para. 39.

135/ Retherford, Robert D. and Minja Kim Choe, Statistical Models for Causal Analysis, (John Wiley & Sons, Inc., 1993), pp. 20-21.

136/ A claim is considered to be an "outlier" for purposes of the C1-Money or the C4-CPHO models if the amount claimed for any one of the C1-Money losses (transportation, food, lodging, relation, other) or C4-CPHO losses (clothing, personal effects, household furniture, other) differs significantly from the amounts claimed for these items from the same submitting entity. Second Report Addendum, Annex I, "Technical Description", para. 8.

137/ Second Report, para. 38.

138/ Included among these, as expected, are some claims that had originally stated inordinately high outlier amounts and that had been reviewed earlier for data error.

139/ This review verifies not only whether amounts have been correctly stated and entered in the electronic claim, but also whether data affecting significantly relevant model variables has been correctly captured in the electronic claim.

140/ Fifth Report, para. 16.

141/ See, e.g., S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996) and S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997).

142/ There has been particular concern that awards for C4-CPHO losses appear to have been capped at approximately US$40,000. Such a result would not signify ineffectiveness or misapplication of the model, however, but would merely be a function of the amounts claimed by and the wealth profiles of the claimant population used to build the model.

143/ See note 127, supra.

144/ In no claims reviewed has the primary evidence (receipts, invoices, bills and similar documentation) supported the inordinately high amounts claimed by outlier claimants, even given the most generous interpretation.

145/ The Panel noted in its review of claims in the first instalment that fewer than 15 per cent of C4-CPHO claimants were able to provide such primary evidence. First Report, p. 142.

146/ First Report, p. 164.

147/ Ibid., p. 165.

148/ Even in the first instalment, where the task was of manageable scope, information provided by the secretariat was not considered sufficiently specific to allow for identification of some claimants. First Report, p. 164, note 284.

149/ For example, the Commission has been advised that a very few individuals who actually deposited funds in Kuwaiti bank accounts after 2 August 1990 but prior to their evacuations have not been able to retrieve

those funds. Because they have furnished proof of demand and denial, these individuals will have their C5 bank account losses reconsidered in the seventh instalment.

150/ Decision 24, S/AC.26/Dec.24 (1994). Pursuant to this decision, any claimant who has submitted an individual claim in category "A" and has also submitted a claim for departure losses in category "C" may be compensated in category "C" only insofar as the amount of such losses is determined to exceed US$2,500. Any claimant who has filed a family claim in category "A" and has also filed a claim for departure losses in category "C" may only be compensated insofar as the amount of such losses is determined to exceed US$5,000.

151/ In such claims, the amount calculated by the C1-Money model in category "C" would have been entirely offset by the category "A" awards and there would have been no other compensable loss in the claim.

152/ First Report, pp. 164-65; Second Report, paras. 42-43.

153/ In connection with the rejection of these claims, the Panel notes, in particular, that the claimants' asserted deprivation of all economic resources should be clearly observable from the claim form and the attached documents. See First Report, p. 194; Second Report, note 48; Third Report, note 15; Fourth Report, note 25; and Fifth Report, note 42.

154/ First Report, pp. 32-33.

155/ See also S/AC.26/1992/16.